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In The

# Supreme Court of the United States

October Term, 1995

DARRYL WONG, WILLIE WONG
and DELPHINE WONG,

*Petitioners,*

vs.

CITY COUNCIL OF THE CITY OF CARSON,
PLANNING COMMISSION OF THE CITY OF CARSON,

*Respondents.*

**On Petition For A Writ Of Certiorari To The Supreme Court Of California**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Is the City of Carson's Administrative Resolution 91-014, which conditions the City of Carson's issuance of a permit to terminate month-to-month tenancies and close the Avalon-Carson Mobile Home Park on the owners' payment of more than $1.4 million dollars to park tenants for mobile home coaches, moving expenses, dislocation fees, and stipends for low income seniors and disabled tenants, a regulatory or physical taking, or both, under the Fifth Amendment of the United States Constitution?

2. Does the City of Carson's Administrative Resolution 91-014, which functionally requires the parkowner to refund to tenants all of the profits the parkowner has made, violate substantive due process in that it unreasonably deprives parkowners of their "fair return" to which they are entitled under Carson's Rent Control Ordinance?

## PARTIES TO THE PROCEEDING BELOW

Petitioners, Darryl, Willie and Delphine Wong, own the Avalon-Carson Mobile Home Park, located in the City of Carson, California. The Wongs sought a closure permit from the City of Carson so that they could remove the month-to-month tenants and end their mobilehome park business. The City of Carson's City Council conditioned the closure permit on the Wongs paying the tenants over $1.4 million dollars. The Wongs petitioned the Superior Court of the State of California, County of Los Angeles for a writ of mandate to set aside the payments. The State Superior Court denied the petition and the California Court of Appeal, Second Appellate District, affirmed. The Court of Appeal ruled that the City's conditions did not violate the Takings or Due Process Clauses of the Fifth and Fourteenth Amendments. The California Supreme Court granted review on May 12, 1994 and dismissed review on May 11, 1995 without decision or explanation.

Respondent is the City of Carson. The City of Carson has been the respondent to the Wongs' petition for a writ of mandate, appeal, and petition for California Supreme Court review.

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## OPINIONS BELOW

**Opinions In This Action:**

On May 11, 1995, after briefing on the merits but before decision, the California Supreme Court dismissed the Wongs' petition for review without explanation. A copy of this final decision denying review of the opinion of the Court of Appeal, Second District is attached as Appendix 71.

On May 12, 1994, the Supreme Court of California granted the Wongs' Petition for Review of the Court of Appeal's decision. A copy of the decision granting review is attached as Appendix 70.

On January 31, 1994, the unpublished opinion of the California Court of Appeals, Second Appellate District, Division One was filed in Darryl Wong, et al. v. City Council of the City of Carson, Case No. B074046. A copy of the opinion, affirming the trial court's denial of the Wongs' writ of mandate, is attached hereto as Appendix 1-7.

On January 28, 1993, an Order Denying Petition For Writ of Mandate and a Statement of Decision were entered in Darryl Wong, et al. v. City Council of the City of Carson, Super. Ct. No. BS008355, in the Superior Court for the State of California, County of Los Angeles. Copies of the Order and Statement of Decision are attached hereto as Appendix 8-18.

On March 19, 1991, after appeal, the City of Carson issued a Notice of Conditions of Approval of Discretionary Permits for the proposed closure of the Avalon-Carson Mobile Home Park. The Conditions were set forth in Resolution 91-014, which was attached as Exhibit A to the Notice. A copy of the Notice of Conditions of Approval

and Resolution 91-014 are attached hereto as Appendix 19-69.

**Opinions In The Related Actions:**

On December 2, 1988, the Wongs filed a Petition for a Writ of Mandate with the Superior Court of California, County of Los Angeles. The Wongs sought to compel the City of Carson to set a hearing on their second Relocation Impact Report and application for closure. The Court denied the Wongs' petition, without issuing any ruling or statement of decision. A copy of the Judgment Denying Petition for Writ of Mandate is attached as Appendix 72-73.

On May 20, 1991, the Wongs filed an action in the Federal District Court for the Central District of California, entitled Wong v. City of Carson, No. CV-91-2127 LEW. On June 29, 1991, the Federal District Court entered a final decision and order dismissing the Wongs' complaint. In dismissing the complaint, the Federal District Court noted that the Wongs had not asserted a substantive due process claim, and it dismissed the Wongs' as-applied takings claim as not ripe for federal adjudication as the Wongs had not yet exhausted state judicial remedies. A copy of the Federal District Court decision is attached as Appendix 74-83.

## STATEMENT OF JURISDICTION

The California Supreme Court dismissed without decision the review of the opinion of the Court of Appeal of the State of California, First Appellate District, Division Two on May 11, 1995. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Takings Clause of the Fifth Amendment of the United States Constitution, which provides: "Nor shall private property be taken for public use, without just compensation."

This case also involves the Due Process Clause of the Fourteenth Amendment of the United States Constitution, which provides: "No state shall . . . deprive any person of life, liberty, or property, without due process of law."

Finally, the case involves the constitutional application, under the Takings and Substantive Due Process Clauses of the United States Constitution, of California Government Code § 65863.7 which provides in relevant part:

> (a) Prior to the . . . closure of a mobilehome park or cessation of use of the land as a mobilehome park, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed. In determining the impact of the conversion, closure or cessation of use on displaced mobilehome park residents, the report shall address the availability of adequate replacement housing in mobilehome parks and relocation costs.
>
> . . . .
>
> (e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The

steps required to be taken to mitigate shall not exceed the reasonable costs of relocation.

## STATEMENT OF THE CASE

In April 1979, Petitioners, DARRYL, WILLIE and DELPHINE WONG (hereafter "the Wongs"), executed a trust deed for $1.2 million and paid $500,000 cash down for the Avalon-Carson Mobile Home Park. (AR 7, 161)[1] The $1.7 million purchase was completed by June 1979. In the purchase, the Wongs acquired a 9 acre, 172 space mobilehome and recreational vehicle park, located in the center of the City of Carson, California (hereafter "City"). (AR 106, 6535) The park was built in 1947 as an interim land use pending other development. (AR 4036) The park occupies land zoned Commercial-Regional Center, Commercial General, and Residential Multiple Dwelling. (AR 106, 6536)

After the Wongs executed the purchase contract and trust deed, the City adopted a rent increase moratorium. Two months later, the City enacted a rent control ordinance which rolled rents back to their May 1979 levels and strictly disallowed any rent increase unless prior approval was obtained from the City's Rental Review Board. Carson Muni. Code § 4700 *et seq.*; *Carson Mobile Home Park Owners' Ass'n v. City of Carson*, 35 Cal.3d 184, 187-188 (1983) [describing the City's rent control ordinance's provisions].

As a consequence of the moratorium and rent control ordinance, all adjustments in space rents after the Wongs purchased their park were made by the City's Rent

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[1] "AR" is a citation to the Administrative Record; "CT" is the Clerk's Transcript on Appeal, and "RT" is the Reporter's Transcript.

Review Board. The income for the park was set by the City's Board to meet the constitutionally mandated "fair return" requirement.

Over time, the Wongs were having financial difficulty operating the park. (AR 3-4, 7-89, 38, 86-87, 107-108, 154-157) In March 1988, the Wongs wrote to the City's mayor and to the park's tenants indicating their intention to go out of the mobilehome park business. (AR 21) The Wongs explained that over the 10 years of their ownership, the park's "operational costs had increased 85%, but due to the restrictions of the Carson rent control ordinance, the total net operating income ha[d] increased only 16.4% in the same 10 years. . . . In addition, the age of the park would necessitate substantial, and costly infrastructure improvements" estimated to cost "$858,000". (AR 3-4, 7-8)

The Wongs explained to the City that, ten years after purchasing the Avalon-Carson Park, it earned "less [return] than a pass-book savings account" and the park's infrastructure, built in 1947, needed replacement. (AR 4) In short, the park was collapsing and posed an inevitable liability – a time-bomb for litigation. See California Civil Code § 798.84 *et seq.* The Wongs, unable to afford the liability or expense associated with continued operation of the park, decided to go out of business. They applied to the City for a permit to remove the month-to-month tenants and close the park. (AR 4, 7, 46)

**The Relocation Impact Report Application Process**:

California Government Code § 65863.7, subdivision (a) requires a parkowner "to file a report on the impact of . . . closure, or cessation of use [of the land as a mobile home park] upon the displaced residents." Subdivision (e) allows a local government to condition issuance of a

closure permit on a requirement that the parkowner "take steps to mitigate *any* adverse impact of the . . . closure, or cessation of the use on the ability of displaced mobile home park residents to find adequate housing in a mobile home park." However, Subdivision (e) expressly limits the steps to be taken *"shall not exceed the reasonable costs of relocation."* [Emphasis added.][2]

The Wongs submitted their first RIR to the City's Planning Department on May 13, 1988. (AR 52) The application was rejected because it contained no plan for alternate use of the land other than "vacant use" (AR 46, 96, 112), and did not contain appraisals of mobilehomes. The City deemed it incomplete for these and other reasons. (AR 50-51) In order to meet the City's demands, the Wongs were forced to propose the alternate use of tenant or City ownership by offering to sell the park to its tenants or the City.[3] After the rejection of these offers, the Wongs were forced to propose commercial development for the land. (AR 42, 122, 4510) The City took the position that, even with these changes, the second RIR application was incomplete. (AR 339, 344-349, 379, 512) The Wongs

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[2] The City's Municipal Code also requires parks applying for closure to file a relocation impact report and allows the City to impose mitigation conditions. See CMC § 9128.21.

[3] The Wongs offered to sell the park to its tenants, or the City, for $7 million. The suggested price was within the realm of fair market value for the park when owned by tenants. In California, mobilehome tenants wanting to purchase their park have an absolute right to subdivide the land into individual lots, which they can then retain or sell with the mobilehome. Cal. Gov. Code § 66428.1. When the mobilehome is coupled with the fee the value of the package skyrockets. However, the $7 million price is approximately 6 to 7 times the value of the park when owned by a landlord for use as a mobilehome park under the City's rent control structure. See fn. 6.

filed a petition for Writ of Mandate to compel the City to set a hearing on the second RIR. (AR 559) The Superior Court denied the Wongs' petition, without issuing a Ruling or Statement of Decision indicating its basis. (AR 644-645; CT 319) Thereafter, the City required the Wongs to submit five additional revised and updated RIRs (AR 653-3309), until finally the City accepted the August 14, 1990 RIR as "complete." In total it took over twenty months to have the application accepted for processing. (AR 3183-3184)

**"Last Resort" Mitigation:**

A mobilehome is personal property which depreciates as does an automobile with time and use. The majority of the mobilehomes in the Avalon-Carson park are 20 to 25 years old (AR 4657-4658) and have actual (or "intrinsic values") of approximately $1,000 to $2,000. (AR 927-930) This means that a 25-year-old mobilehome unconnected to a space is worth a few thousand dollars.

In California, for reasons which are complex, the "in-park" value of a mobilehome, when sold by a tenant to a new tenant, is inflated many times over its intrinsic value.[4] The Avalon-Carson tenants produced appraisals

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[4] One explanation which petitioners find credible is that the combined effect of the California Mobilehome Residency Law, Civil Code § 798 *et seq.* (hereafter the "MRL") and local rent control ordinances produces an inflation of "in-place values" due to the non-existence of vacant spaces. The City found no vacant mobilehome spaces within a 50-mile radius of the Avalon-Carson Mobilehome Park. (§ 5A at App. 33) This occurs because the MRL prohibits tenants from being evicted from spaces except for specific offenses such as failure to pay rent (§ 798.56) and gives tenants exclusive control over who may purchase and occupy their mobilehome (§ 798.74), while rent

showing "in-park" values (or "trading") values for their coaches ranging from $19,200 to $66,100. (Golden State Appraisal at AR 4657-4658.)

These "in-park" values are created independently from anything the Wongs do. The Wongs have month-to-month tenancies for which they collect rent-controlled rents. The Wongs are allowed no other economic role in the park, and in no way participate in the initial sale or subsequent sales of mobilehomes. The tenants "make the market" and establish the "in-park" values.[5]

California Government Code § 65863.7, subdivision (e) expressly limits closure mitigation to "the reasonable costs of relocation." Despite these facts, the City ordered the Wongs to underwrite the tenants' "in-park" values at the expense of the Wongs' own investment and property.

Prior to the City's hearings, the City Planning Commission Staff proposed requiring the Wongs to purchase tenants' mobilehomes at prices ranging from $7,000 to $48,675. Additionally, the Wongs were to pay moving

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control ordinances maintain rents at below-market levels. See, e.g., Hirsch & Hirsch, *Placement Values and Vacancy Control*, 35 UCLA L. Rev. 399, 426 (1988).

[5] The MRL, enacted in 1978, forbids parkowners from entering tying arrangements as a condition of tenancy. For example, park owners may not require tenants to buy mobilehomes from the park, may not charge fees for landscaping the tenants' spaces, and may not require tenants to sell their mobilehomes through the park ownership. Civil Code § 798.72. Once mobilehomes are "in-park", a park owner has no role in determining who may purchase a used coach from a park tenant. Civil Code § 798.74. The State has thus set up a strict, economic hands-off policy when the parkowner deals with tenants. The parkowner's exclusive role is to offer rental spaces, for which he maintains the park's land and facilities, and for which he obtains rent.

expenses and dislocation fees, together with bonuses for low income seniors and disabled tenants. (AR 4903-4910) At the City Planning Commission hearings, the Commission approved the staff's proposed payments. (AR 4889-4911)

The Wongs appealed to the City Council arguing that requiring them to purchase tenants' mobilehomes violated Government Code § 65863.7 by exceeding "the reasonable costs of relocation" and constituted a taking of their property. (AR 4970) Public hearings on the appeal were held before the City Council. (AR 5040-5993, 6073-6108, 6471-7515, 6521, 6534)

On March 19, 1991, the City Council adopted Resolution 91-014. (AR 6556) The resolution subjected the park closure to the Planning Commission's requirements for buyouts. (AR 6549-6555) The Wongs were mandated to purchase the tenants' $1,000-$2,000 mobilehomes for $7,000-$48,000. (AR 927-930, also comparison of Golden State appraisals at AR 4657-4658.)

**The Mitigation Conditions of Resolution 91-014:**

Section 1 of Resolution No. 91-014 indicates that the Wongs' Park contained 171 usable spaces, occupied by 75 mobilehomes, 77 recreational vehicles, and 3 trailers not fitting the definition of mobilehome or recreational vehicle. Space rents ranged from $108 to $192 per month. (App. 23-24) Sections 4 and 5 of Resolution 91-014 set forth the City Council's findings, including the fact that there *were no vacant mobilehome spaces available within a 50-mile radius of the Avalon-Carson Mobile Home Park* for relocation of residents' coaches. (Res. 91-014, § 5A at App. 33) Section 7 of Resolution 91-014 sets forth the City's requirements for assistance: In the event a relocation space could not be found for a mobilehome, the Wongs

were required to pay a "last resort benefit." (App. 41-65) This benefit, available to 69 resident mobilehome owners and the owners of 3 trailers without motors, required the Wongs to purchase the mobilehome coaches and trailers at their "value-in-place" defined as the "depreciated replacement cost." (App. 55, 57-59)

In addition to the purchase of coaches, tenants were to be paid $1950 in relocation expenses regardless of where they moved, plus a $200 dislocation fee. (App. 56) Additionally, the City's mitigation required the Wongs to provide the 30 resident recreational vehicle (RV) owners and 2 tenant occupants $41,400 as well as the $200 dislocation fees to drive their RVs to another RV park. (App. 40, 42-44) An unspecified number of households with low-income seniors, disabled or handicapped persons were given a bonus payment of $1,000 each. (App. 48)

The City, by Resolution No. 91-014, imposed upon the Wongs a price tag in excess of $1,471,695.00 to terminate month-to-month tenancies and close the Avalon-Carson Park business. This price is 86% of the park's purchase price, more than all of the value of the land for its current use,[6] and many times the total rent controlled

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[6] The value of this park ranges between $811,264 and $1,243,938. The value of a rental mobile home park is based on its income stream. Values are obtained by dividing annual net operating income by a capitalization rate. In recent years, capitalization rates for mobile home parks located in Southern California have ranged from approximately 7.5% to 11.5%, with "Grade A" parks selling at the lower rates. Timothy E. Wright, MAI, *Mobile Home Park Valuation Issues*, Palmer, Groth, Pietka & Wright, June 1993, Sacramento, pp. 17-18; Henry Doney, *4th Quarter Investment Outlook*, Western Mobilehome Park Investments Sierra Madre, October 20, 1993; Franz E. Fisher, *Appraisal and Pricing of Mobilehome Parks*, Western Mobilehome Association Reporter, Vol. 14, No. 6, June 1988. Net operating income

"fair return" the Wongs earned during their ownership of the park.[7]

The Wongs faced a choice of neither affording to continue, nor affording to close.

**The Decision Under Review:**

In June 1991, the Wongs filed a petition for a writ of mandate in State court, asking the Superior Court to set aside Resolution 91-014. (CT 1-28) The Superior Court denied the Wongs' petition. (App. 8-9) The Court first rejected the City's argument that the Wongs had not exhausted their administrative remedies. (App. 12, 16) The Court then ruled on the merits of the Wongs' petition. The Court held that the required payments to the tenants do not exceed the reasonable cost of relocation, do not take their property and do not require the Wongs to remain in business. (App. 12-13, 16-18)

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from the park in 1990 excluding debt service was $93,295.33, annualized from the Wongs' 1990 operating income worksheet. (AR 4651-4653) Capitalizing this income yields a range of values from $811,264 to $1,243,938. The Wongs' original investment in the park was $500,000. The Resolution's price in excess of $1,471,695 is more than the value of the park and roughly 3 times the Wongs' original cash investment!

[7] The Wongs testified that, on their $500,000 investment, they were making less (after debt service) than a pass-book savings account would make. If pass-books earned 6% during the Wongs' ownership of the park, the Wongs would have netted $30,000 per year. At that rate, it would take them 49 years to generate the $1,471,654 imposed. That is longer than the park has been in existence. Even at 10%, it would take more than 29 years. Enforcement of the City's conditions means that the Wongs would be required to refund to tenants many times the guaranteed "fair return" they have earned in their fifteen years of ownership of the park.

The Wongs appealed the Superior Court decision, and continued to assert that the payments imposed by the City constituted a physical or regulatory taking and violated substantive due process. (CT 793) (Appellants' Opening Brief).

The Court of Appeal, Second Appellate District, Division One, in a pithy three and one/half page decision, disagreed with the Wongs and affirmed the trial court's denial of the petition for a writ of mandate. (App. 1-7) Noting a local government's right to impose reasonable regulations on property owners to advance state interests, the Court of Appeal found the City's mitigation conditions, including the requirement that the Wongs purchase tenants' coaches, "reasonable." On this basis, the Court of Appeal held that the conditions did not constitute a taking of property without just compensation or a denial of substantive due process. (App. 4-7) In so ruling on the merits of the Wongs' takings and substantive due process claims, the Court of Appeal incorrectly applied Federal constitutional law.

## REASONS FOR GRANTING REVIEW

### A. The City's "Staggering" Mitigation Conditions Effect A Permanent Physical Occupation Of The Wongs' Property.

The Takings Clause of the Fifth Amendment provides "Nor shall private property be taken for public use, without just compensation." A taking occurs when the government physically intrudes upon private property, or authorizes others to do so. "Where the government authorizes a physical occupation of property (or actually takes title), the Takings Clause generally requires compensation." *Yee v. City of Escondido*, 503 U.S. 519, 522, 112 S.Ct. 1522, 118 L.Ed.2d 153, 162 (1992).

Such a physical occupation of property constitutes a government taking without regard to the legitimacy or import of the government's purpose. *Lucas v. South Carolina Coastal Council*, 505 U.S.___, 112 S.Ct. 2886, 120 L.Ed.2d 798, 812 (1992).

In *Yee v. City of Escondido*, mobilehome parks in Escondido argued that the City's rent control ordinance, in conjunction with the California Mobilehome Residency Law (Cal. Civ. Code § 798, *et seq.*), effected a taking of their property. Under the combination of laws, Escondido parkowners were precluded from setting rents or choosing tenants. Consequently, they argued that their essential property right to exclude others had been taken. *Yee*, 503 U.S. 519, 524-527. This Supreme Court disagreed, holding that "[t]he government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land." *Id.* at 527 [emphasis original]. Because the parkowners voluntarily rented their land to mobilehome owners, and because Civil Code § 798.56 of the Mobilehome Residency Law allowed parkowners wishing to change the use of their lands to evict tenants with proper notice, the *Yee* Court concluded that no taking by forced physical occupation had occurred. *Id.* at 527.

This Court acknowledged that "[a] different case would be presented were the statute . . . to compel a landowner over objection to rent his property or refrain in perpetuity from terminating a tenancy." *Id.* at 528. In this case, as in *Yee*, the Wongs voluntarily rented their lands to mobilehome owners. However, unlike the park owners in *Yee*, the Wongs are denied the ability to terminate the rental by ending the mobilehome use of their land. The City conditioned its permission for closure of the Wongs' business on payment of a ransom. Compare

*Seawall Associates*, 542 N.E.2d at 1063 [finding a local law requiring owners to continue to rent single occupancy rooms or be subject to severe closure penalties a physical taking]; *Guimont v. Clarke*, 854 P.2d 1 (Wash. 1993) [finding mitigation conditions requiring a mobilehome park owner to pay each tenant up to $7,500 "staggering"]; *Golden Gate Hotel Association v. City and County of S.F.*, 864 F.Supp. 917, 923 (N.D. Cal. 1993) [finding requiring a "king's ransom" for a permit to close a residential hotel constituted a physical taking], but reversed and vacated on statute of limitations grounds, 18 F.3d 1432, 1487 (9th Cir. 1994).

In *Aspen-Tarpon Springs L.P. v. Stuart*, the Court of Appeal for the State of Florida examined a local ordinance which, like the City's Resolution 91-014, required a parkowner who wished to close his business to move tenants to another comparable park within fifty miles or to purchase the tenants' mobilehomes and appurtenances. 635 So.2d 61, 62 (Fla. 1994). As applied to the Aspen-Tarpon Park, the ordinance required the parkowner to pay 32% to over 100% of the land's value to tenants. *Id.* at 63. The Court of Appeal, affirming the trial court's holding that the ordinance as applied to the Aspen-Tarpon Springs Park constituted a physical and regulatory taking, explained:

> We agree with the trial court that the statute goes far beyond the legitimate goal of reasonably accommodating conflicting interests, *in effect coercing mobile home park owners to surrender indefinitely their rights to possess and occupy their land and to exclude others.* Once the park owners have rented their property to mobile home owners, they are required by section 723.062(2) to continue doing so unless they buy all the mobile homes or pay to have them moved. *A statute that requires any form of remuneration to*

> *recover the right to possess and occupy one's own property would seem to be confiscatory,* but the evidence presented to the trial court demonstrated that neither the "buy out" option nor the "relocation" option is even economically feasible. Therefore, as a practical matter, the challenged statute authorizes a permanent physical occupation of the park owner's property and effectively extinguishes a fundamental attribute of ownership, the right to physically occupy one's land. *Id.*, 635 So. 2d 61, 67 [emphasis added].

The City's conditions have also coerced the Wongs "to surrender indefinitely their rights to possess and occupy their land and to exclude others." Compare *Aspen-Tarpon*, 635 So.2d at 67. The practical effect of the City's prohibitive conditions has been to "compel [the Wongs] over objection to rent [their] property" and remain in the mobilehome park business. Compare *Yee*, 503 U.S. at 528; *Aspen-Tarpon*, 635 So.2d at 67; and *Seawall Associates v. City of New York*, 542 N.E. 2d 1059, 1063-1065 (1989). The Wongs are left with the option of paying more than $1.4 million, a price they cannot afford, to repossess, use for another purpose, or dispose of their property. Compare *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426-427 and 427, n.5, 102 S.Ct. 3164, 72 L.Ed.2d 866 (1983) at 426-427, 435 [To the extent government permanently occupies physical property, it effectively destroys the owners' rights in his property, – the rights to possess, use and dispose]; also *U.S. v. General Motors Corp.*, 323 U.S. 373, 377-378, 65 S.Ct. 357, 89 L.Ed. 311 (1945); and *Fresh Pond Shopping Center v. Callahan*, 464 U.S. 875, 878, 104 S.Ct. 218, 78 L.Ed.2d 215, 216 [Rehnquist, J., dissenting upon the ground that a local ordinance which prohibited demolition of rent-controlled

apartments transferred the owner's "reversionary interest" in property to tenants and "effected a permanent physical invasion" of the owner's property.] The City has thus *conscripted* the Wongs' land, which has long been zoned for other uses, and converted month-to-month tenancies into permanent, public housing, subsidized under rent control by the Wongs.

### B. The City's Mitigation Conditions Go Too Far And Constitute A Regulatory Taking.

"[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 67 L.Ed. 322 (1922); *Lucas v. South Carolina*, 505 U.S. ___, 120 L.Ed.2d at 812, *Yee v. City of Escondido*, 503 U.S. at 529. The determination of whether a regulation "goes too far" is based on "ad hoc, factual inquiries." *Lucas*, 505 U.S. ___, 120 L.Ed.2d at 812; *Yee*, 503 U.S. at 523 and 529. However, these inquiries are not without standard: The Fifth Amendment is violated by a land-use regulation if it "does not substantially advance legitimate state interests or denies an owner economically viable use of his land." *Lucas*, 505 U.S. ___, 120 L.Ed.2d at 812, quoting *Agins v. Tiburon*, 447 U.S. 255, 260, 100 S.Ct. 2138, 65 L.Ed.2d 106 (1980). A regulation also may effect a taking when "the purpose of the regulation or the extent to which it deprives the owner of economic use of the property suggest that the regulation has unfairly singled out that property owner to bear a burden that should be borne by the public as a whole." *Yee*, 503 U.S. at 522.

*Legitimate State Interests*: Land use regulations violate the Takings Clause when they do not substantially advance legitimate state interests. *Agins v. Tiburon*, 447 U.S. at 260. In *Nollan v. California Coastal Comm'n*, 483 U.S.

825, 834, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), it was determined that there must be an "essential nexus" between the legitimate state interest motivating the restriction and the impact of the owner's land use. In the recent case of *Dolan v. City of Tigard*, 512 U.S. ___, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), this Court defined the degree of "nexus" that must be present when a city makes an adjudicatory decision to impose a condition on a land use permit; the city must show that there is a "rough proportionality" between the condition's impact on the property owner and the harm to be mitigated. "Rough proportionality" requires the City to make an "individualized determination that the required dedication is related both in *nature* and *extent* to the impact of the proposed development." *Id.*, 129 L.Ed.2d at 320.

Resolution 91-014 fails this test. The Wongs seek a permit allowing them to terminate month-to-month tenancies and close the Avalon-Carson Mobilehome Park. The City has conditioned issuance of a permit to terminate month-to-month tenants on the Wongs' payment of lump sums of money unrelated to month-to-month tenancies. The City indicates that its purpose in imposing these conditions is "to protect the mobile home owners . . . considerable investment in their mobile homes, which includes the cost of improvements and maintenance (as well as financing), and to protect mobile home owners ability to afford replacement housing, upon closure of a park." (Res. 91-014, § 4D at App. 32)

The legitimacy of the Wongs protecting the tenant's "investment" – i.e., the inflated trading value of coaches – at the expense of the Wongs' right to terminate month-to-month tenancies and possess, use and dispose of their property is questionable. The Wongs did not create the

mobilehome values. They did not participate in the purchase or sale of the mobilehomes, nor invite tenants to enter these inflated transactions. The Wongs never marketed the coaches as investment opportunities, nor did they rent spaces on any other basis than month-to-month. The Wongs simply provided low cost spaces on a month-to-month basis, and whether a tenant sold a coach to a new tenant for $1,000 or $100,000, the Wongs received the same space rent. What tenants paid for coaches, or might later receive for coaches, was never the provenance of the Wongs.

The City's purchase requirements do not preserve month-to-month tenancies nor provide new spaces. Requiring the Wongs to pay park tenants does not preserve anything unless the City's actual "intent and effect is to coerce the [Wongs] to surrender indefinitely [their] right to possess and occupy [their] land and to exclude others, and to do so for the exclusive benefit of a limited class who are lessees." Compare *Aspen-Tarpon*, 653 So.2d at 64.

While the Wongs have provided tenants affordable housing at below-market rents since 1979, neither their use of the land as a mobilehome park, nor the proposed closure, has created the scarcity of mobilehome spaces, or the general lack of alternative low cost housing, or the low-income status of many of the mobilehome park's tenants. These are societal problems, present not only in the City, but across the Nation. In *Guimont v. Clarke*, the Washington Supreme Court explained:

> Mobile home parks provide a source of low-cost housing for the elderly and those with low incomes. These people often cannot afford relocation costs. Yet by requiring the closing park owner to pay these costs, which can amount to extremely high sums of money, the

> State is placing the burden of solving housing problems on the shoulders of a few. . . . [I]t is the general unavailability of low income housing and the low income status of many of the mobile home owners that is the more fundamental reason why the relocation assistance is necessary. An individual park owner who desires to close a park is not significantly more responsible for these general society-wide problems than is the rest of the population. 854 P.2d at 15.

"The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49, 80 S.Ct. 1563, 1569, 4 L.Ed.2d 1554 (1960); *Yee*, 503 U.S. at 522; *Seawall Associates*, 542 N.E.2d at 1062. The Wongs did not cause the lack of mobilehome spaces or the lack of other affordable housing in the area. "The nexus between the obligations placed on [the Wongs] . . . and the alleviation of the highly complex social problem of [low income status and the general unavailability of low income housing] is indirect at best and conjectural." *Seawall Associates*, 524 N.E.2d at 1069 [no nexus between N.Y. ordinance disallowing change of use of residential hotels and social problem of homelessness.] "Such a tenuous connection between means and ends cannot justify singling out this group of property owners [i.e., mobilehome park owners] to bear the costs required by the law toward the cure of the[se] . . . problem[s]." *Id.*

*Economically Viable Use*: The impact of the City's mitigation conditions on the Wongs' economically viable use of land is severe. While there is no tidy formula for determining when a regulation or its application denies an owner economically viable use of his land, this Court

has identified three factors which have "particular significance." (1) "the economic impact of the regulation on the claimant"; (2) "the extent to which the regulation has interfered with distinct investment-backed expectations"; and (3) "the character of the government action." *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 224-25, 106 S.Ct. 1018, 89 L.Ed.2d 166 (1986) (citations omitted); also *Keystone Bituminous Coal Ass'n v. DeBenedictus*, 480 U.S. 470, 494-95, 107 S.Ct. 1232, 94 L.Ed.2d 472 (1987), and cases cited therein.

In this instance, the City's mitigation conditions attach a cost on the Wongs' right to go out of business which approaches the full purchase price of the land and exceeds its value as a mobilehome park. Viewed from another perspective, the City's price for going out of business greatly exceeds all of the profit the Wongs have earned on space rentals during their entire ownership of the park. This exaction was never anticipated. Rather, after limiting space rents to below-market levels for over ten years, the *City has imposed a previously undisclosed and staggering expense on the business.*

California law has accorded strong legal recognition to a residential landlord's right to go out of business. Civil Code § 798.56 preserves parkowners' right to go out of business and Government Code § 65863.7 allows owners to convert the use of their land upon payment of mitigation "not [to] exceed the reasonable costs of relocation." The Ellis Act (Cal. Gov. Code § 7060.1 *et seq.*) preserves the fundamental right of landlords to go out of the rental business, explicitly overruling *Nash v. City of Santa Monica*, 37 Cal.3d 97 (1984) "so as to permit landlords to go out of business." Cal. Gov. Code § 7060.7. Additionally, the City has zoned the land for commercial uses. (AR 6535) These laws have shaped the Wongs'

reasonable investment-backed expectations, which are impermissibly negated by the City's closure conditions.

The City's exactions compel the Wongs to allow tenants to take and retain physical *possession* until the Wongs comply with practically and economically impossible requirements. The Wongs are denied the power to *exclude*. This Court has repeatedly held that, "as to property reserved by its owner for private use 'the right to exclude [is] one of the most essential sticks in the bundle of rights that are commonly characterized as property.' " *Nollan*, 483 U.S. at 831, quoting *Loretto*, 458 U.S. at 433 and *Kaiser Aetna v. United States*, 444 U.S. 164, 176, 200 S.Ct. 383, 392-393, 62 L.Ed.2d 332 (1979); also *Dolan*, 512 U.S. ___, 129 L.Ed.2d at 316.

The City's exactions also defeat the Wongs' right to control the *use* of their property. The Wongs are forced to continue a business which carries substantial liabilities including the legal duty to expend funds to maintain and repair the park's failing infrastructure. Cal. Civ. Code §§ 798.84 *et seq.* While the Wongs may retain the "bare legal title" to *dispose* of their land by transfer or sale, the required $1.4 million payment or permanent occupation of the land by mobilehome tenants, empties the title of much of its value. Compare *Loretto*, 458 U.S. 435-436 and *Hodel v. Irving*, 481 U.S. 704, 715, 717, 107 S.Ct. 2076, 95 L.Ed.2d 668 (1987) [in which this Court unanimously found a compensable taking even though the right to devise the owner's reversionary interest in the land was the only component of the bundle of rights that was affected].

The Wongs purchased their land in 1979 with the legitimate investment-backed expectations of either earning a profit as a mobilehome park or being able to use the

land for another zoned use. The City has denied both expectations.

### C. The City's Mitigation Conditions, Requiring The Refund Of Many Times The Wongs' "Fair Return" Income Under Rent Control, Violates Substantive Due Process.

The Fourteenth Amendment prohibits states from "depriv[ing] any person of . . . *property* without due process of the law." U.S. Const., Amend. 14, § 1. The essence of a substantive due process claim is that the government's action depriving a person of a property interest is "fundamentally unfair, . . . constitut[ing] an abusive, irrational, arbitrary, and capricious use of government power." *Sinaloa Lake Owners Ass'n v. City of Simi Valley*, 882 F.2d 1389, 1407-1409 (9th Cir. 1989), cert. denied, 494 U.S. 1016, 110 S.Ct. 1317, 108 L.Ed.2d 493 (1990); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S.Ct. 114, 71 L.Ed. 303 (1926).

This Court has invalidated property regulations where it is clear that the means is unduly oppressive of individual rights, or unduly discriminatory, and therefore unreasonable. See *Lawton v. Steele*, 152 U.S. 133, 137, 14 S.Ct. 499, 38 L.Ed. 385 (1894) [the government's means must be "reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals"]; *Goldblatt v. Hempstead*, 369 U.S. 590, 594-595, 8 L.Ed.2d 130, 82 S.Ct. 987 (1962) [employing the "unduly oppressive" analysis of Lawton]; *Moore v. East Cleveland*, 431 U.S. 494, 514, 79 S.Ct. 1932, 1937, 52 L.Ed.2d 531 (1977).

In *Guimont v. Clarke*, the Supreme Court of Washington subjected Washington's Mobile Home Relocation Assistance Act, RCW 59.21, to substantive due process

scrutiny for reasonableness, under the following test: (1) whether the regulation is aimed at achieving a legitimate public purpose; (2) whether it uses means that are reasonably necessary to achieve that purpose; and (3) whether it is "unduly oppressive on the landowner." 845 P.2d at 14, citing *Lawton v. Steele*, 152 U.S. at 137 and *Robinson v. Seattle*, 119 Wash.2d 34, 55, 830 P.2d 318, cert. denied, ___U.S.___, 121 L.Ed.2d 598, 113 S.Ct. 676 (1992).

Washington's Relocation Assistance Act required a parkowner to contribute money toward tenants' relocation before closing the business. Specifically, the act provided that low-income tenants were entitled to $4,500 in relocation assistance for single-wide mobilehomes and $7,500 for double or larger mobilehomes. If tenants were given two years notice of closure, a state "relocation fund," which had never been funded, was to pay a portion of the assistance. *Id.* at 4-5. If the relocation assistance fund lacked sufficient resources to pay its share of assistance, the parkowners were required to pay the entire entitlement to tenants – $4500 for single coaches and $7500 for double or larger coaches. *Id.* at 15.

Noting that in the worst case scenario, a parkowner's obligation to pay relocation assistance was "staggering," the Washington Supreme Court held that the act was unduly burdensome on landowners and consequently violated the Fourteenth Amendment's Due Process Clause. *Id.* at 13-16. Applying the three-prong substantive due process test, the court took into account the seriousness of the problems created by park closure and the State's legitimate interest in resolving those problems. However, the court concluded that it was *unreasonable* to require the parkowners to shoulder the burden of resolving these societal problems. The Court explained:

> [I]t is the general unavailability of low income housing and the low income status of many of the mobile home owners that is the more fundamental reason why the relocation assistance is necessary. An individual park owner who desires to close a park is not significantly more responsible for these general society-wide problems than is the rest of the population. Requiring society as a whole to shoulder the costs of relocation assistance represents a far less oppressive solution to the problem. *Id.* at 15.

In this instance the City's $1,447,654 price on its permission to close the Wongs' mobilehome park is also "staggering." Resolution 91-014 requires the Wongs to pay to each of the 72 tenants qualifying an average of $20,440, a price well in excess of the amount determined to be "unduly burdensome" in *Guimont v. Clarke*, 854 P.2d at 15. It also requires the Wongs to refund to tenants many times the individualized "fair return" income granted the Wongs by the Rent Board during their operation of the Avalon-Carson Mobile Home Park.

The "fair return" is a property right of the Wongs. The Due Process Clause of the Fourteenth Amendment protects individuals from undue deprivation of property rights which have been created or granted by state or municipal law. *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); *Paul v. Davis*, 424 U.S. 693, 709-711, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976); *Bishop v. Wood*, 426 U.S. 341, 344-347, 96 S.Ct. 2074, 48 L.Ed.2d 684 (1976).

Since 1979 the Wongs' space rents have been set in administrative hearings by the Carson Rent Review Board to guarantee the Wongs a "fair return" on their property during the tenants' monthly use. This "fair return," once received, is the Wongs' vested property right. Yet the City conditions a closure permit on massive

payments to the tenants. The City thus requires the Wongs to refund over twenty-nine years of the park's present net operating income to tenants as a condition of the City's permission to end simple month-to-month tenancies. (See Fn. 7, ante.) This represents more than all of the "fair return" the Wongs have ever earned in the park and as such is unduly oppressive on the landowner.

### D. The Wongs' Takings And Substantive Due Process Claims Are Ripe For Federal Review And Review is Not Barred on State Procedural Grounds.

The as-applied takings and substantive due process claims presented in this petition are ripe for federal review. The finality requirement for federal review of a takings or substantive due process claim is concerned with whether the initial decision maker has arrived at a definitive position on the regulation of the claimant's property. *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 191, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985).

The Wongs pursued and completed an administrative appeal of the Planning Commission's initial Resolution 90-1364, in which the Commission specified its mitigation requirement for park closure. This was a meaningful application for a variance. However, at the conclusion of the appeal, the City confirmed the Planning Commission's requirements. In doing so, the City enunciated its definitive position on what the Wongs were required to pay tenants.[8]

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[8] Despite the Wongs' completion of an administrative appeal, Carson asserted in the state proceedings below that the Wongs had failed to exhaust their administrative remedies

The Wongs have also exhausted their state court remedies, having pursued a remedy to the highest State Court. (See App. 70-71)

Nor are there any state procedural bars to review of the Wongs' federal constitutional claims. The prior state action for a writ of mandate did not involve a takings or substantive due process claim, but sought to compel a hearing on the Wongs' second application for closure. The state court dismissed the petition without any ruling or statement of decision. (App. 72-73) The denial without opinion of a petition for a writ of mandate is not *res judicata*. *Greshko v. County of Los Angeles*, 194 Cal.App.3d 822, 827 (1987); *McKnight v. Faber*, 185 Cal.App.3d 639, 651 (1986).

Finally, the federal district court action does not bar review of the Wongs' claims. The district court dismissed the Wongs' as-applied taking claim on the procedural ground that it was not ripe for federal adjudication. The Wongs had not yet pursued their State court remedies. (App. 76, 79-80) A dismissal for ripeness is equivalent to a dismissal for lack of subject matter jurisdiction. *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989), cert.

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because they did not apply for a modification based upon Section F of Carson's RIR ordinance which provides: "A modification of the RIR may be granted upon a substantial hardship for the owner and that any such modification will not unreasonably prejudice the interests of tenants." (AR 4092) The trial court expressly rejected this argument and held that the Wongs had exhausted their administrative remedies. (App. 12, 16) This finding was not reversed by the Court of Appeal, who determined the merits of the Wongs' takings and substantive due process claims. (App. 4-7)

denied, 493 U.S. 993, 110 S.Ct. 541, 107 L.Ed.2d 539 (1989). A dismissal for lack of jurisdiction is not a disposition on the merits and is therefore without prejudice. *Cook v. Peter Kiewit Sons Co.*, 775 F.2d 1030, 1035 (9th Cir. 1985), cert. denied, 476 U.S. 1183, 106 S.Ct. 2619, 91 L.Ed.2d 547, also *The Wilderness Society v. Babbit*, 5 F.3d 383, 385 (9th Cir. 1993).

The federal district court also ruled that the Wongs in challenging "the procedure by which plaintiffs are to accept the resolution conditions" had stated a procedural, but not a substantive due process claim. (App. 81-82) The City argued below that the Wongs' substantive due process claim was barred by the *res judicata* effect of the district court action, in that the Wongs should have raised the claim in that action. The California Court of Appeal, however, essentially ignored this argument and ruled on the merits of the substantive due process claim, citing federal law as a basis of its decision. (App. 6)

The California Supreme Court dismissed review without explanation. (App. 71) It must therefore be assumed that the dismissal confirmed the merits of the appellate decision, and did not constitute a dismissal on an unannounced procedural ground. *Ylst v. Nunnemaker*, 501 U.S. 797, 803, 111 S.Ct. 2590, 115 L.Ed.2d 706 (1991); *Coleman v. Thomas*, 501 U.S. 722, 732, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). In short, there is no procedural bar to this Court's review.

As explained by this Court: "State procedural bars are not immortal, . . . , they may expire because of later actions by state courts. If the last state court to be presented with a particular federal claim reaches the merits, it removes any bar to federal court review that might have otherwise been available." *Ylst v. Nunnemaker*, 501

U.S. at 801, citing *Harris v. Reed*, 489 U.S. 255, 261, 109 S.Ct. 1038, 103 L.Ed.2d 308 (1989); see also *Lucas v. South Carolina*, ___U.S.___, 120 L.Ed.2d 798, 810 [finding U.S. Supreme Court review of a takings claim permissible where the South Carolina Supreme Court ignored the possibility of further administrative and trial proceedings and made a decision on the merits.]

### E. Review Will Settle Substantial Questions of Federal Law.

There are currently no fewer than 5,817 mobilehome parks and 377,149 spaces in the State of California. Baar, *The Right to Sell the Immobile Manufactured Home In Its Rent Controlled Space in the Immobile Home Park: Valid Regulation or Unconstitutional Taking*? 24 Urban Lawyer No. 1, p. 157 (Winter, 1992). Each of these parks will some day need to seek a closure permit. Thus, like the City's Planning Department, municipal agencies across the State of California are and will be making adjudicatory decisions in which they attempt to determine the requirements for a closure permit. Review of the Wongs' case by this Court would greatly reduce the chance that these municipal agencies will abuse their police power.

As is illustrated by the cases of *Aspen-Tarpon Springs L.P. v. Stuart*, 635 So.2d 61 (Fla. 1994) and *Guimont v. Clarke*, 854 P.2d 1 (Wash. 1993), municipal agencies and courts across the Nation are faced with these federal constitutional questions as they interpret local ordinances and state statutes which impose conditions on mobilehome park closures. These issues are not being answered consistently: The California Court of Appeal opined that the City's mitigation conditions did not violate the Takings or Due Process Clauses. However, the

Florida Court of Appeal in *Aspen-Tarpon* found very similar mitigation requirements to constitute a physical and regulatory taking. The Washington Supreme Court, on the other hand, found lesser mitigation requirements to constitute a violation of substantive due process. "Such a conflict [among the courts] is, of course, a substantial reason for granting certiorari under this Court's Rule 10." *Yee v. City of Escondido*, 503 U.S. at 537. Municipalities and courts are faced with similar questions in regard to residential hotels, apartment buildings and other multi-family residential accommodations. See for instance *Seawall Associates v. City of New York*, 542 N.E.2d 1059, 1062 (1989).

In this case, the Wongs are held hostage. They cannot afford the continued operation of their park, with its failing infrastructure, but neither can they afford the City's conditions for a closure permit. Review by this Court would define the constitutional limitations on conditions imposed by municipal agencies for tenants, municipalities, courts and property owners across the United States.

## CONCLUSION

Wherefore, Petitioners respectfully request that their petition for a writ of certiorari be granted.

Dated: August 9, 1995

Respectfully submitted,

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**APPENDIX**

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

| | | |
|---|---|---|
| DARRYL WONG et al., Petitioners and Appellants, v. CITY COUNCIL OF THE CITY OF CARSON et al., Respondents. | ) | B074046 (Super.Ct.No. BS008355) (Filed Jan. 31, 1994) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert H. O'Brien, Judge. Affirmed.

Robert J. Jagiello, for Petitioners and Appellants.

Glenn R. Watson, City Attorney (Carson); Richards, Watson & Gershon and Rochelle Browne, for Respondents.

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Darryl Wong, Willie Wong and Delphine Wong sought and obtained approval from the City of Carson to close their mobile-home park, subject to certain conditions. By a petition for a writ of mandate, the Wongs challenged the conditions. The trial court denied the petition and the Wongs appeal. We affirm.

## FACTS

In June 1979, the Wongs bought the Avalon-Carson Mobilehome Park in the City of Carson. In 1988, the Wongs (who wanted to use the property for apartments and a shopping center) applied to the City for permission to close the park. At the same time, they filed a relocation impact report (RIR), as required by section 65863.7 of the Government Code.[1] The Wongs' RIR was incomplete, and the City informed them their application could not be set for hearing until the missing information was provided. Instead of completing the report, the Wongs filed an action challenging the City's RIR ordinance. That petition was denied and judgment was entered for the City.

In August 1989, the Wongs filed a revised but still incomplete RIR. In September 1990, it was finally corrected, after which the Wongs' application for closure was heard, a decision was rendered and appealed (by the Wongs and a group of mobilehome owners) and additional hearings were held. In March 1991, the City approved the Wongs' application, subject to conditions which required them to provide relocation assistance to the mobilehome owners to be displaced by the closure – payment of the costs of moving the mobilehomes (about $500 to $7,500 per owner), a lump sum for the cost of

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[1] Unless otherwise stated, all section references are to the Government Code.

Under section 65863.7, the person proposing a change in the use of a mobilehome park is required to file a report on the impact of the conversion, closure or cessation of use upon the park's displaced residents. In the City of Carson, an ordinance covers the procedure for implementing the RIR requirements.

moving furniture and other personal property (about $600 to $700 per owner), and for households with a handicapped or low-income senior member, an additional $1,000 per household. There was also a "last resort benefit" payable in the event a relocation space could not be found for a mobilehome occupied by a resident owner.[2]

In May 1991, the Wongs filed suit in federal court, contending the RIR ordinance, facially and as applied to them, constituted an unconstitutional taking. The district court found some of the claims were time-barred, others meritless, and still others premature, and the action was dismissed.[3]

In June 1991, the Wongs filed this action, seeking damages and a writ of mandate and claiming the conditions imposed by the City exceeded the assistance authorized by section 65863.7, were not supported by substantial evidence, and amounted to an unconstitutional taking of their property. The trial court bifurcated the petition from the complaint for damages, heard the petition and denied it. Since the Wongs' damage claims

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[2] This benefit, to which 69 of the 172 occupants of the park might be entitled, was included because the RIR revealed (1) that no relocation spaces were available within 50 miles of the City and (2) that other park owners might be unwilling to rent space to a used mobilehome even if space was available. The "last resort benefit" is calculated by reference to the depreciated replacement value of the mobilehome, to compensate the owners for their lost investments.

[3] As a result of the federal court action, it appears that all issues save the reasonableness of the conditions imposed by the City have been resolved and are subject to the City's defense of res judicata.

were based on their assertion that the imposition of illegal conditions had improperly delayed the closure of the park, the ruling on the petition necessarily resolved the claims for damages and a final judgment was entered in favor of the City. The Wongs appeal.

## DISCUSSION

### I.

The Wongs contend the conditions are so financially onerous they preclude closure of the park and thus amount to an unconstitutional taking. We disagree.

There is no constitutional right to go out of business, or to any particular use of land. (*Nash v. City of Santa Monica* (1984) 37 Cal.3d 97.)[4] The only question, then, is whether the conditions are legitimate, which they are if they substantially advance legitimate state interests and do not deny the Wongs an economically viable use of their land. (*Nollan v. California Coastal Comm'n* (1987) 483 U.S. 825, 834-835.) Our courts have routinely upheld

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[4] In response to *Nash*, the Legislature adopted the Ellis Act (§ 7060 et seq.) which, as relevant, provides that no public entity shall "compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease." (§ 7060, subd. (a); see also *Javidzad v. City of Santa Monica* (1988) 204 Cal.App.3d 524, 529-530.) Contrary to their assertion, this statute does not help the Wongs – because the City of Carson has not prohibited closure of the park. To the contrary, it has granted the Wongs' application for closure, subject to the conditions discussed in this opinion.

relocation assistance conditions imposed when an apartment owner seeks permission to convert to condominiums (e.g., *Kalaydjian v. City of Los Angeles* (1983) 149 Cal.App.3d 690, 693; *Briarwood Properties, Ltd. v. City of Los Angeles* (1985) 171 Cal.App.3d 1020, 1031; *People v. H & H Properties* (1984) 154 Cal.App.3d 894, 900-902; *Griffin Development Co. v. City of Oxnard* (1985) 39 Cal.3d 256, 263-265) and we see no reason why the result ought to be different in the context of mobilehomes. The issue, therefore, is whether the relocation assistance conditions imposed by the City of Carson are reasonable. They are.

As a practical matter, the cost of moving a "mobile" home makes it immobile. Mobilehomes are usually placed permanently in parks, on pads rented from the owner and placed in a setting which includes roads, utilities, washing machines and other common area improvements, as well as site-specific amenities such as driveways, walkways, steps, porches and landscaping. When the owner of a mobilehome wants to move, the mobile-home typically is sold in place and the purchaser assumes the rent for the park pad. (*Yee v. City of Escondido* (1990) 224 Cal.App.3d 1349.) For these reasons, subdivision (e) of section 65863.7 authorizes the City to impose conditions on the closure of a mobilehome park, "to mitigate any adverse impact of the conversion [or] closure" on the displaced residents, provided only that the amounts do "not exceed the reasonable costs of relocation." (And for these reasons, the Wongs' claim that the conditions do not advance a legitimate state interest must be rejected.)

In the apartment-condominium context, conditions requiring the payment of movers, security deposits at a

new location, first and last months' rent, offsets for higher rents and extra funds to assist seniors and the handicapped have all been upheld. (*Kalaydjian v. City of Los Angeles, supra,* 149 Cal.App.3d at p. 693; *Briarwood Properties, Ltd. v. City of Los Angeles, supra,* 171 Cal.App.3d at p. 1031; *People v. H & H Properties, supra,* 154 Cal.App.3d at pp. 900, 902.) The conditions imposed in this case are indistinguishable. They require payment of particular costs to be incurred by each mobilehome owner as a result of the closure, no more and no less. As far as the "last resort benefit" is concerned, it compensates the mobilehome owners for their lost investment, with the amounts individually calculated to prevent a windfall to any owner. In sum, substantial evidence supports the trial court's findings that the conditions are reasonable and do not constitute a physical or regulatory taking without compensation. (*Strumsky v. San Diego County Employees Retirement Assn.* (1974) 11 Cal.3d 28, 44.)

II.

The Wongs also contend they were denied due process. Again, we disagree. A restriction on the use of property is not subject to a due process attack unless the restriction is clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare. (*Euclid v. Ambler Realty Co.* (1926) 272 U.S. 365, 395; *Lawton v. Steele* (1894) 152 U.S. 133, 137; *Nash v. City of Santa Monica, supra,* 37 Cal.3d at p. 103.) For the reasons discussed in Part I, *ante,* the conditions imposed in this case are not subject to a due process attack.

III.

The Wongs contend that, "by insisting upon unconstitutional and invalid information," the City delayed the park closure for a period of four years, as a result of which the Wongs lost money. Since we have found the regulations constitutional and valid, the City was entitled to the information it sought and the Wongs' damage claims necessarily fall with their constitutional attack on the regulations. It is for this reason the trial court entered a final judgment disposing of the damage claims as well as the petition for a writ of mandate, and it is for this reason we affirm the judgment in its entirety.

DISPOSITION

The judgment is affirmed. The City of Carson is entitled to its costs of appeal.

NOT TO BE PUBLISHED.

VOGEL (Miriam A.), J.

We concur:

SPENCER, P.J.

MASTERSON, J.

GLENN R. WATSON
CITY ATTORNEY
CITY OF CARSON

RICHARDS, WATSON & GERSHON
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Attorneys for Respondents
City Council of the City of Carson,
and Planning Commission of the
City of Carson and Real Parties in
Interest the City of Carson

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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|---|---|
| DARRYL WONG, WILLIE WONG and DELPHINE WONG,<br><br>Petitioners,<br><br>v.<br><br>CITY COUNCIL OF CITY OF CARSON, PLANNING COMMISSION OF CITY OF CARSON,<br><br>Respondents. | Case No. BS 008 355<br><br>ORDER DENYING PETITION FOR WRIT OF MANDATE<br><br>(Filed Jan. 15, 1993) |
| THE CITY OF CARSON,<br><br>Real Party in Interest. | |

Petitioner's motion for peremptory writ of mandate was heard regularly on November 25, 1992, in Department 85 of the above-entitled court, the Honorable Robert H. O'Brien, Judge presiding. Petitioners Darryl Wong, Willie Wong and Delphine Wong appeared through their attorney of record, Robert J. Jagiello. Respondents City Council of the City of Carson, Planning Commission of the City of Carson and the City of Carson (sued herein as the real party in interest) appeared through their attorneys of record, Richards, Watson & Gershon, a Professional Corporation, by Rochelle Browne.

The court, having admitted into evidence a 20-volume administrative record, having taken judicial notice of City Resolution 90-139 and the complaint and decision in the Federal District Court for the Central District of California case no. 91-2721-LEW entitled *Wong v. City of Carson, et. al.*, issued a statement of decision which is incorporated herein by reference as though set forth in full.

It is hereby ordered that the Petition for Writ of Mandate shall be and is denied, and the clerk shall enter this Order.

1-15-93 (Initials Illegible)
DATED: ~~December ___, 1992~~

/s/ Robert H. O'Brien
HONORABLE ROBERT H. O'BRIEN
Judge of the Superior Court

GLENN R. WATSON
CITY ATTORNEY
CITY OF CARSON

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

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| DARRYL WONG, WILLIE WONG and DELPHINE WONG,<br><br>Petitioners,<br><br>v.<br><br>CITY COUNCIL OF CITY OF CARSON, PLANNING COMMISSION OF CITY OF CARSON,<br><br>Respondents. | Case No. BS 008 355<br><br>~~PROPOSED~~ STATEMENT OF DECISION (C.C.P. §632) RE ORDER DENYING PETITION FOR WRIT OF MANDATE<br><br>(Filed Jan. 15, 1993) |
| THE CITY OF CARSON,<br><br>Real Party in Interest. | |

The motion for peremptory writ of mandate was heard regularly on November 25, 1992, in Department 85 of the above-entitled court, the Honorable Robert H. O'Brien, Judge presiding. Petitioners Darryl Wong, Willie Wong and Delphine Wong appeared through their attorney of record, Robert J. Jagiello. Respondents City Council of the City of Carson, Planning Commission of the City of Carson and the City of Carson (sued herein as the real party in interest) appeared through their attorneys of record, Richards, Watson & Gershon, a Professional Corporation, by Rochelle Browne.

The court first heard argument on the Court's own Motion for an Order to Show Cause why the Petition for Writ of Mandate should not be dismissed for failure to prosecute, and discharged the OSC for failure to prosecute despite Petitioners' delay. The court then heard argument on Respondents' request to take judicial notice of exhibits and Respondents' motion to strike the declarations of Robert Jagiello and Darryl Wong. The court granted the motion to strike the declarations and granted the request to take judicial notice except as to the City's survey of vacant mobilehome spaces in the City and surrounding areas.

The court received the administrative record lodged by the City (20 volumes) in evidence, indicated that the court had read and considered the record, and heard the oral argument of counsel regarding the Petition. The court took all matters under submission.

The court issued a Tentative Decision dated December 14, 1992. A copy of the court's Tentative Decision is

attached hereto as Exhibit "A" and incorporated by reference herein as if set forth in full.

The court makes the following statement of decision explaining the factual and legal bases for its decision denying Petitioner's Petition for Writ of Administrative Mandate:

1. The court exercised its independent judgment in reviewing the evidence and the City's decision challenged in this matter by Petitioners.

2. Petitioners exhausted their administrative remedies.

3. The City ordinances and resolutions that are the subject of this matter do not unconstitutionally or otherwise impinge upon Petitioners' rights, because the City has a statutory responsibility under Government Code § 65863.7 to require Petitioner to pay residents' "reasonable costs of relocation" prior to closing the mobilehome park.

4. The City's Resolution No. 91014, approving the park closure and requiring that Petitioners provide reasonable relocation assistance to displaced residents, is not an unconstitutional taking of private property for public use without payment of just compensation.

5. It is clear from the record, including the rationale behind the adoption of Resolution 91-014, that the process, relocation assistance requirements and other conditions imposed on Petitioners by Respondents are a proper means by which to mitigate the adverse impacts on residents of Petitioners' decision to close their mobilehome

park pursuant to Government Code § 65863.7. The process and conditions imposed were proper efforts by Respondents at determining the "reasonable costs of relocation" pursuant to Government Code Section 65863.7.

6. Those residents who might be entitled to "last resort benefits" pursuant to the City's decision are properly treated differently than residents who can easily relocate. The term "in place value" in the record is more accurately characterized as "depreciated replacement cost." The term is merely another way to quantify these "last resort" residents' reasonable costs of relocation. Whatever the characterization, it is clear that the City's valuation does not constitute a taking because it specifically excludes any placement value or values that might be attributable to rent control.

7. There has been no physical occupation of Petitioners' properly in this matter because the subject Resolution does not require Petitioners to remain in business. Respondents have in fact approved Petitioners' closing the business within the framework of applicable and constitutional law.

1-15-93 (Initials Illegible)
DATED: ~~December ___, 1992~~

/s/ Robert H. O'Brien
HONORABLE ROBERT H. O'BRIEN
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

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|---|---|
| DARRYL WONG, WILLIE WONG and DELPHINE WONG,<br>Petitioners,<br>v.<br>CITY COUNCIL OF CITY OF CARSON, PLANNING COMMISSION OF CITY OF CARSON,<br>Respondents. | CASE NO. BS 008 355<br>TENTATIVE DECISION (C.C.P. § 632, CRC 232)<br>(Filed Dec. 14, 1992) |
| THE CITY OF CARSON,<br>Real Party in Interest. | |

**1. Court's Motion to Dismiss For Failure to Prosecute**

The expedition of the administration of justice is a principle concern to the courts. Virtually every level of the judicial system committed to reducing delay in the handling of lawsuits because of the recognition that delay is a major cause of case backlog. (*See*, Gov't Code § 68600 et seq.; Chapter 13 of Los Angeles Sup. Ct. Rules; §§ 2.1, Judicial Administration Standards (Appendix to Calif. Rules Court)).

Petitioners' Mandate action is no exception to this concern. Petitioner is presumptuous at best in arguing that "[t]o proceed with litigation prior to the . . . decision in . . . *Yee* . . . would have been a waste of judicial as well as legal and financial resources." (Petitioner's Points &

Authorities filed November 18, 1992, p. 6, ll. 24-28). Not only did *Yee* not have the potential of being determinative in this case, the decision reflects substantially different issues than that presented herein. Thus, to use the preparation of and waiting for *Yee* as an excuse for not bringing this case to fruition in a more timely manner is illogical and an affront to good sense.

Also, it is significant to note the excessive overstatements of petitioner in their attempt to cloak their unnecessary delay with legitimacy: 1) there is no evidence that all cases [similar in nature] in the Second Appellate District, the U.S. District Court and the Ninth Circuit "were put on hold" until an authoritative U.S. Supreme Court decision emerged (p. 7 lines 1-6 of petitioners' Points & Authorities); 2) there is no evidence that in April 1992 the City of Escondido was engaged in "an act of political vengeance" (p. 8, ll. 20-21 of petitioners' Points & Authorities), even if such action was relevant here; 3) this Court never said, "the problem with the judiciary is the delay in the processing of cases" in the way petitioner implies, *i.e.*, the judiciary is delaying the cases (p. 11, lines 13-16 of petitioners' Points & Authorities); rather, the delaying tactics of counsel, such as here, is the cause of much of the judiciary's problems in timely processing cases.

In spite of petitioner's reckless disregard for the judicial process, the court feels compelled to proceed with the *merits* of the case due to the significance and importance of the issues presented. Thus, the court discharges the OSC for failure to prosecute.

**2. Petition for Writ of Mandate**

The administrative record is received in evidence (20 vols.). The court grants the motion to strike Wong and Jaqiello [sic] declarations submitted in support of petition. The court rejects paragraph 1 of respondent's request to take judicial notice, and grants paragraphs 2 and 3 thereof.

The court exercises independent judgment relating to the petition.

Petitioners have exhausted their administrative remedies.

Notwithstanding the respective characterizations of the subject ordinance No. 89-882, Resolution 91-014 and Resolution 90-1364 they do not unconstitutionally or otherwise impinge on petitioner's rights.

With regard to petitioners' desire to close their mobilehome park, they must first satisfy the requirements of Government Code section 65863.7. "[R]easonable costs of relocation" for residents may be required by respondent as a condition of approval of petitioner's plan. (*See*, Gov't. Code § 65863.7(d)). Resolution 91-014, approving the application for closure, requires certain conditions providing relocation assistance to displaced residents. Petitioners contend that these conditions constitute an "unconstitutional taking of property". (*See*, ¶ 38 of petition).

Contrary to petitioner's contention (¶ 46 of petition) their RIR approved by Resolution 91-014 was not "revoked" but it simply "lapsed". Moreover, there is an insufficient showing that the $50,000 deposit requirement

denied any procedural due process or other constitutional rights of petitioners.

According to petitioners, the issue is whether respondent's condition that a "monetization of the tenant's right to occupy the space at a reduced rent" is an unconstitutional taking. Respondent contends the issue is, whether the condition merely reflects the proper "reasonable costs of relocation" as means to implement Government Code section 65863.7, *i.e.*, providing for mitigation of adverse impacts on "displaced mobilehome park residents".

In evaluating the record, including the rationale of Resolution No. 91-014 (AR 6535 *et seq.*), it is clear that the process and conditions imposed on petitioners are proper efforts at determining "reasonable costs of relocation".

The 69 residents who might be entitled to "last resort benefits" clearly are entitled to be treated differently from other residents who will have no difficulty in relocating. Notwithstanding the use of the term "in place value" in the Resolution and elsewhere, (*e.g.*, AR 6549) the proper characterization of the assigned valued is "depreciated replacement costs", *i.e.*, simply another way of saying "relocation cost". This value excludes placement value or values that might be attributable to rent control, *i.e.*, "in place value". (AR 6538).

Finally, the subject Resolution does not require petitioners to remain in business. Respondent has approved petitioners closing the business within the framework of applicable and constitutional law.

The petition for mandate is denied. Respondent will prepare, serve and file in Department 85 a proposed

statement of decision consistent with the above not later than 7 days following the date of this order. A judgment is not yet appropriate because of the remaining 4th, 7th and 8th causes of action. All of the other causes of action are decided by virtue of this decision.

DATED: December 14, 1992

/s/ Robert H. O'Brien
Robert H. O'Brien
Judge of the Superior Court

[SEAL] CITY OF CARSON

April 8, 1991

Ms. Debra K. Butler
Jagiello & Pech
Attorneys At Law
28200 Highway 189, Suite F-290
P.O. Box 879
Lake Arrowhead, CA. 92352

Subject: Relocation Impact Report No. 2-88, regarding the revision of the Notice of Conditions of Approval of Discretionary Permits.

Dear Ms. Butler:

In your letter dated April 4, 1991, you questioned the September 19, 1991 expiration date shown on the "Notice of Conditions of Approval of Discretionary Permits" which was transmitted to your office as an attachment to my letter, dated March 25, 1991. You are correct that the expiration date should be September 19, 1992. A copy of the corrected Notice of Conditions is enclosed for your information and files. The original document has been transmitted to Mr. Darryl Wong's office for his information.

Thank you for your assistance in this matter, it is greatly appreciated.

Sincerely,

/s/ Patrick Brown
Patrick Brown
Community Development Director

PB:JDM:ak

Enclosure: Affidavit of Acceptance (Revised 4-8-91)

cc: Darryl Wong, Applicant
John Martin-Harvey, Appraiser
Joseph Lara, Appraiser
Rochelle Browne, Assistant City Attorney

18/51

701 EAST CARSON STREET, P.O. BOX 6234,
CARSON, CALIFORNIA 90749 • PHONE (213) 830-7600

COMMUNITY DEVELOPMENT DEPARTMENT
CITY OF CARSON
701 E. CARSON STREET
CARSON, CA 90745

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**NOTICE**

**Of Conditions Of Approval**

**Of Discretionary Permits**

The Community Development Department of the City of Carson hereby gives notice that the Conditions of Approval attached hereto and incorporated herein by reference, of the discretionary permit(s) set forth below govern the use and/or development of the property identified and described below.

| Permit No. | Description |
|---|---|
| Relocation Impact Report No. 2-88 | Proposed closure of Avalon Carson Mobilehome Park |
| Date Granted | Expires |
| March 19, 1991 | September 19, 1992 |

Address:

Legal Description:

Property is an irregularly-shaped parcel consisting of approximately 9 acres in size and located at 616 E. Carson Street, Carson, California.

See Exhibit "A" of Resolution No. 91-014.

The attached Conditions of Approval shall be enforced until otherwise released by the authority of the relevant agency of the City of Carson or until such time as the

Municipal Code of the City of Carson unconditionally permits the release of this Notice.

[SEAL]

COMMUNITY DEVELOPMENT DEPARTMENT
CITY OF CARSON
PATRICK BROWN, COMMUNITY
DEVELOPMENT DIRECTOR

BY: /s/ James D. Mellein
James Mellein
TITLE: /s/ Associate Planner
DATE: /s/ April 8, 1991

ACKNOWLEDGEMENT FORM ON REVERSE

RESOLUTION NO. 91-014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON APPROVING RELOCATION IMPACT REPORT NO. 2-88 FOR THE CLOSURE OF AVALON CARSON MOBILEHOME PARK PURSUANT TO CONDITIONS PROVIDING RELOCATION ASSISTANCE TO DISPLACED RESIDENTS

THE CITY COUNCIL OF THE CITY OF CARSON HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:

*Section 1.* Darryl Wong, (The "Applicant") located in Los Angeles, California, filed a Relocation Impact Report (RIR) application to close Avalon Carson Mobilehome Park (The "Park") located at 616 East Carson Street, Carson, California. The legal description is attached as Exhibit "A.

Avalon Carson Mobilehome Park was established in 1947. The park currently contains 172 spaces; however, one mobilehome occupies two spaces which limits the mobilehome park to 171 usable spaces at this time. The park has two laundry buildings with pay washers and dryers; two outdoor clothes drying areas; and, one hand car wash facility. The two laundry buildings have single apartment structures located on the second floor of each structure. The rents currently range from $108.00 to $192.00 per month for space rentals.

The subject property is currently divided into three (3) separate zoned districts. The zoning consists of CG-D (Commercial, General – Design Overlay Review); CR-D (Commercial Regional Center – Design Overlay Review)

and RM-25-D (Residential, Multiple Dwelling – 25 units per net acre – Design Overlay Review) zoned districts. Avalon Carson Mobilehome Park is approximately 9 acres in size with a large commercial shopping center located to the east; single-family and mobilehome parks located to the south; mobilehome park and commercial facilities located to the west; and vacant commercial property located to the north.

The RIR document states that 7 acres will be developed into a commercial shopping center and 2 acres are planned for multiple residential development. However, details of the project are unknown at this time.

In accordance with Ordinance No. 81-585, Avalon Carson Mobilehome Park is classified as a "legal" land use although it does not have a conditional use permit to operate at this time. Ordinance No. 81-585 allowed all parks in residential and commercial zones which legally existed prior to the conditional use permit requirement, to maintain legal status without the requirement for a conditional use permit.

The homes in the Park consist of 75 mobilehomes (as defined in Section 798.3 of the California Civil Code) and 77 recreational vehicles (as defined in Section 799.24 of the California Civil Code) which are currently occupying the spaces in the Park, in addition, there are three (3) trailer coaches which *do not* belong within either definition of the California Civil Code because these coaches have special characteristics that *do not* allow these homes to be utilized as recreational vehicles, and they do not meet the minimum size requirements to be classified in a "mobilehome" category.

*Section 2.* The proposal to close Avalon Carson Mobilehome Park began when Talley and Associates, Inc., a consultant specializing in mobilehome parks, notified the City that they were preparing an RIR application in a letter, dated February 10, 1988. On March 4, 1988, the City received another letter from Talley and Associates, Inc. that stated that the first notification of the proposed park closure had been mailed to the residents at Avalon Carson Mobilehome Park and a press release had been prepared.

A. In April, 1988, the park owner installed signs in Avalon Carson Mobilehome Park to put potential buyers of travel trailer or mobilehome coaches in the park on notice that the park owner was in the process of closing the Park at a later date. During the Summer, 1988, the City (with the applicant's approval) selected John Martin-Harvey to appraise appropriate homes in Avalon Carson Mobilehome Park in accordance with Section 9128.21(B)(6) of the Zoning Ordinance (old regulations which were in effect in 1988). Section 9128.21(B)(6) requires the RIR to contain "the appraised market and on-site value of each of the coaches in the park. The appraiser is to be selected by the City and the cost is to be borne by the applicant."

B. However, the applicant filed a legal action which challenged the validity of the appraisal requirement, and in the Fall, 1988, the court ruled that appraisals should be provided for all homes at Avalon Carson Mobilehome Park that did not qualify as recreational vehicles under Section 799.24 of the California Civil Code.

C. On August 1, 1989, the City received a revised RIR application which was prepared by Daniel Cartagena

and Associates, a Consultant representing the applicant. During the review and evaluation period, the RIR documentation was modified and resubmitted to the City until the appraisals were completed and the RIR was determined to be complete on September 4, 1990.

D. On September 15, 1989, copies of the Draft RIR document, site map and appropriate environmental assessment information were transmitted to the City's Public Works Department and other appropriate departments within the City for review and comment. No applicable comments have been received from these agencies.

E. This item was first reviewed by the Planning Commission at a Public Hearing on October 9, 1990, in accordance with Section 9128.21(c) of the Zoning Ordinance, (which was in effect prior to August 31, 1989). Copies of a cover letter, the public hearing notice, the applicant's RIR, moving estimate documentation, individual mobilehome appraisals prepared by the City's appraiser (as applicable), Kelly Blue Book appraisals prepared by the applicant's appraiser (as applicable) and waiver agreements (as applicable) were personally delivered to park residents on September 19, 1990 and September 20, 1990. This provided notification a minimum of fifteen (15) days prior to the October 9, 1990 public hearing in accordance with Zoning Ordinance requirements. In cases where residents were unavailable, the information was mailed by first class delivery to resident and nonresident owners, park owners, park owner's representatives, park owner's legal counsel, the appraiser and appropriate legal owners of coaches located in the park on the same days. The City's appraiser was sent notification on September 25,

1990 and public notice was mailed to the one (1) interested party on September 19, 1990.

F. On September 13, 1990, the Notice of Public Hearing was posted in five (5) public places within the City of Carson and on September 15, 1990, the City had a one-eighth (1/8) page advertisement published in the *Daily Breeze Newspaper*, in addition, notices were sent to interested parties by the Community Development Department informing them of the October 9, 1990 meeting.

G. In accordance with Section 798.56(f)(1) of the California Civil Code and Sections 65863.7 and 65863.8 of the California Government Code, the applicant mailed notices of the hearing to all residents, non-resident owners and appropriate legal owners of coaches located in the park, on September 13, 1990. The applicant provided the City with a Notice of "Proof of Service by Mail" which verified that the notices were mailed a minimum of fifteen (15) days or more prior to the October 9, 1990 meeting.

H. At the October 9, 1990 Public Hearing, the Planning Commission continued the review and evaluation of Relocation Impact Report No. 2-88 to the November 27, 1990 meeting to provide additional time for review of some of the issues discussed at the October 9, 1990 meeting including: 1) A Legal Opinion from the City Attorney's office concerning the effect of discussions between an applicant and Planning Commissioner or Commissioners; 2) The effect of potential relocation benefits on Social Security Benefits, Supplemental Social Security Income or State Disability Insurance; 3) An analysis of special circumstances relating to Spaces A-7, B-51 and D-25; and 4) The actions of the City Council pertaining to the appeal of relocation benefits proposed for El Rancho

Mobilehome Park residents; and to provide additional time for the residents' attorney to obtain supplemental appraisal information, and provide an opportunity for the City's appraiser to attend the meeting and answer questions.

I. On October 15, 1990 and October 16, 1990, copies of a notification letter outlining the actions of the Planning Commission to continue this item from the October 9, 1990 meeting to the November 27, 1990 meeting were mailed. The notification letters were sent by first class mail to all park residents, nonresident (coach) owners, park owners, park owner's representatives, park owner's legal counsel, the appraiser, appropriate legal owners and one (1) interested party.

J. The Negative Declaration for the closure of Avalon Carson Mobilehome Park was reviewed and considered by the Planning Commission at the October 9, 1990 public hearing and approved at the November 27, 1990 meeting, prior to the determination of relocation benefits and approval of the park closure. In addition, at the November 27, 1990 meeting, the Planning Commission adopted Resolution No. 90-1364 which approved Relocation Impact Report No. 2-88, subject to mitigation measures for the provision of relocation benefits to displaced residents.

K. On December 10, 1990 and December 12, 1990, the City Clerk's office received letters of appeal from the applicant and also from the legal counsel representing the Avalon Carson Homeowner's Association, in response to these appeals, Relocation Impact Report No. 2-88 was scheduled for public hearing before the City Council at their January 2, 1991 meeting.

L. On December 17, 1990, staff mailed copies of the Public Hearing Notice by first class mail to the resident and nonresident owners, park owners, park

owner's representatives, park owner's legal counsel, the appraiser and appropriate legal owners of coaches located in the park. In addition, the Public Notice was mailed to the one (1) interested party on December 17, 1990.

M. On December 17, 1990, the Notice of Public Hearing was posted in five (5) public places within the City of Carson and on December 19, 1990, the City had a 6-point advertisement published in the *Daily Breeze Newspaper*. In addition, copies of the Public Notice were also sent to interested homeowner's associations and other interested parties by the City Clerk's office informing them of the January 2, 1991 meeting.

N. At the January 2, 1991 hearing, the City Council continued this item to provide additional time to resolve issues discussed at the Public Hearing. In addition, the hearing was continued to provide an opportunity for the City's appraiser to provide testimony relating to appraisal methodology at the February 5, 1991 meeting.

O. At the February 5, 1991 hearing, questions were raised as to the accuracy of appraisals prepared for the City by Mr. John Martin-Harvey. The City Council instructed staff to obtain review appraisals by a new appraiser and continued the Public Hearing to March 5, 1991.

P. On February 15, 1991, staff mailed copies of the Public Hearing Notice for the March 5, 1991 hearing, by first class mail to the resident and nonresident owners, park owners, park owner's representatives, park owner's legal counsel, the appraiser and appropriate legal owners of coaches located in the park. In addition, the public notice was mailed to one (1) interested party on February 14, 1991.

Q. On February 14, 1991 the Notice of Public Hearing was posted in five (5) public places within the City of Carson and on February 18, 1991, the City had a 6-point advertisement published in the *Daily Breeze Newspaper.* In addition, copies of the public notice were also sent to interested homeowner's associations and other interested parties by the City Clerk's Office informing them of the March 5, 1991 meeting.

R. At the March 5, 1991 Public Hearing, the City council took testimony from John Martin-Harvey, the City's appraiser, and from Joseph Lara, the review appraiser representing All Counties Appraisals. Testimony was also received from the applicant, the applicant's legal counsel, residents, legal counsel for some of the residents and an appraiser hired by the residents.

*Section 3.* In conjunction with the RIR application, an Environmental Information and Checklist Form (Initial Study) was prepared pursuant to the California Environmental Quality Act (CEQA). A Negative Declaration was prepared for this project stating that the proposal will not have a significant impact on the environment, pursuant to proposed relocation benefits to the resident owners for the reasonable costs of relocation.

On September 6, 1990, the Public Notice-Negative Declaration was posted in five (5) public places within the City of Carson and on September 8, 1990, the City had a one-quarter (1/4) page advertisement published in the *Daily Breeze Newspaper.* The Negative Declaration for the closure of Avalon Carson Mobilehome Park was reviewed, considered and approved by the Planning Commission at the October 9, 1990 and November 27, 1990 meetings. The Negative Declaration was considered and approved by

the City Council at the March 19, 1991 hearing, prior to the determination of relocation benefits and approval of the park closure by adoption of this Resolution.

Section 4. Based on the evidence, both oral and written, received at the Public Hearings, the City Council finds that:

A. The fair market value of mobilehomes in place is dependent on several factors, including the location, condition and amenities of the park, the size, quality, amenities and condition of the mobilehome and the scarcity of rental spaces within the City and neighboring areas. The purchase price paid and the mortgage and insurance obligations of the mobilehome owners who rent spaces in the parks are based on the fair market value in place in a park. If mobilehome owners cannot recover the amount of their investment or cannot recover enough to satisfy their mortgage obligations when a park closes, and their home cannot be relocated to another park within a reasonable distance, they will suffer significant financial hardship and may be unable to obtain replacement housing without relocation benefits. Therefore, the Relocation Impact Report (RIR) Ordinance requires appraisals of the mobilehomes in a park that is closing so that adequate information is available concerning the adverse impact on the mobilehome owners who will be displaced by the closure.

B. A portion of the fair market value of a mobilehome in place (as determined by comparable sales) in a park is dependent on the location, condition and amenities of that park. The applicant has asserted that a

portion of this value is therefore attributable to the investment and property rights of the park owner.

C. A concern was raised that the existence of the City's Mobilehome Park Space Rent Control ("Rent Control") Ordinance may operate to increase the fair market value (as determined by comparable sales) of a mobilehome in place in a park in the City. However, there is no evidence before the Council to document the existence, or amount, of any such effect.

D. The purposes of the Rent Control and RIR Ordinances are to protect the mobilehome owners who rent spaces in mobilehome parks from excessive rents and to protect their considerable investment in their mobilehomes, which includes the cost of improvements and maintenance (as well as financing) and to protect their ability to afford replacement housing, upon the closure of a park. The ordinances are also intended to permit park owners a fair profit and to allow them to change the use of the property without incurring unreasonable burdens. Neither the Rent Control nor the RIR Ordinance is intended to protect increases in market value in place which are in excess of the amount required to obtain replacement housing, greater than the investment made by mobilehome owners, or greater than remaining mortgage obligations if that obligation exceeds the actual investment.

E. The findings set forth in Subsections A through D of this Section raise questions concerning whether the comparable sales or replacement cost appraisal method is most appropriate in reviewing the adverse impacts on displaced mobilehome owners. While the findings set

forth in Subsections A and D provide reasons for the use of the comparable sales approach, the findings set forth in Subsections B and C and the mandate of Government Code Section 65863.7 and the RIR Ordinance that the relocation benefits imposed not exceed the "reasonable costs of relocation" provide reasons for the use of the replacement cost approach (Cost Analysis Method). After balancing and considering these findings, the Council finds that the replacement cost appraisal approach, based on a guide such as the Marshall & Swift Manual utilized by the appraiser who prepared the appraisals for the RIR in this case, should be used because it excludes any value that might be attributable to the Rent Control Ordinance and eliminates any value of a mobilehome which might be attributable to the location and the value of the park owner's land. Use of the Replacement Cost Appraisal Method results in an "In-Place Value" or "On-Site Value" which includes no value for location and no value for the underlying land except to the limited extent that it assumes that the home is located on a site somewhere in Southern California.

Section 5. Based on the evidence, both oral and written, received at the Public Hearings, the City Council further finds that:

A. The consulting firm of Daniel Cartagena and Associates surveyed 100 mobilehome parks located in the South Bay-Long Beach-Orange County area on February 4, 1990 and February 5, 1990. The survey shows that no vacant spaces were available at the time the survey was completed.

B. The RIR includes moving estimates from two (2) professional moving companies outlining the individual costs of moving trailer coaches, recreational vehicles and mobilehomes (with moveable improvements) to new locations. The moving estimates from Best-Way Movers ranged from $500 to $7,700 and the moving estimates were lower than the estimates from Golden Coast Movers.

C. During the preparation of the RIR application for the proposed closure of El Rancho Mobilehome Park, the consulting firm of Port & Flor, Inc. conducted several housing surveys to provide information for the development of relocation benefits. The findings in Items D-G below are based on the results of those surveys.

D. In November, 1989, a survey was conducted which showed that there were some used mobilehome/trailer sales of units located in parks in the Los Angeles-Long Beach area at that time. The prices ranged from $5,995 to $30,000.

E. In December, 1989, a survey was conducted which showed that there were some apartments available in the South Bay area with rents ranging from $350 to $650. The units ranged in size from bachelor/studio singles to larger two-bedroom apartments.

F. In November, 1989, a survey was conducted which showed that there were some condominium/townhouses located in the South Bay area for approximately $62,000 to $119,000. These units range in size from a studio unit to four-bedroom units. The number of bathrooms range from one (1) bathroom to three (3) bathrooms. In addition, the units have association fees which range from $90 to $247 per month.

G. Finally, a survey was conducted to determine the moving estimates for the packing and relocation of household items to new locations. The maximum cost estimate for moving a one-bedroom household a distance of 30 miles or less ranged from $500 to $600. The cost estimate for moving a two-bedroom household ranged from $600 to $700.

H. The rental rates paid by the residents of the Park currently range from $108 to $192 per month. Displaced residents will incur higher rents at replacement spaces, apartment rentals or other alternative housing based on surveys of rental costs in the area. Residents will also be required to pay first and last month's rent, in addition to security deposits at their new locations. If comparable alternative spaces cannot be found for the mobilehomes (as defined in Section 798.3 of the California Civil Code) and the recreational vehicles (as defined in Section 799.24 of the California Civil Code) located in the Park, residents who own these homes may lose their investment in them.

I. All mobilehomes, trailer coaches and recreational vehicles depreciate (in value) without the advantage of placement in a mobilehome park. The market value for used mobilehomes, trailer coaches and, to some degree, recreational vehicles without a permanent space for installation, is greatly reduced from the value-in-place or on-site value as defined above using the Marshall & Swift Manual to evaluate depreciated replacement value. The mobilehomes currently located at Avalon Carson Mobilehome Park have been appraised at "Value in Place" prices ranging from $7,000 to $48,675, whereas, the "Value For Removal" prices range from $4,000 to $20,000.

J. Some of the residents in Avalon Carson Mobilehome Park are elderly, disabled and/or handicapped and they will incur relocation expenses in addition to those expenses incurred by other residents as a result of their age, disability and/or handicap. Examples of such expenses include, but are not limited to, expenses for travel to doctors in the Carson area from their new location, expenses for assistance in packing their belongings for the move, and expenses for special equipment to be rented or purchased and installed at the new housing location.

K. All residents will incur numerous costs when coaches are relocated from the Avalon Carson Mobilehome Park to a new park or alternative storage facility. In many cases, the residents have tear-down and set-up expenses when the coaches are relocated. Many times, the mobilehome owner has invested in moveable improvements which may include, but are not limited to, awnings, carports, storage sheds, porches, skirting and similar appurtenances. The roofs of some mobilehomes must be resealed if they are relocated and rental running gear is necessary if the coach is not capable of being transported on the highway utilizing its existing axles and tires. In some cases, certain improvements cannot be relocated because of age or the lack of compliance with current building and/or zoning standards.

L. It is not unusual for parks to refuse to accept older coaches for relocation. In this case, it is likely that the park resident would be required to purchase a new or used mobilehome which currently exists in the newer park if the resident wishes to relocate to that park. This situation would likely mean that the mobilehome park resident would sell his coach

at a considerable loss between the difference in the on-site and off-site values, and incur a mortgage in the purchase of the newer mobilehome. The proposed closure of Avalon Carson Mobilehome Park carries with it the loss of certain social contacts which the residents have with their friends and neighbors in the area. Relocation will mean the loss of the current comfortable surroundings and for those who relocate outside of the South Bay area, the loss of close contact with friends, family, doctors and social groups.

M. In 1990, the Avalon Carson Tenants Action Committee (ACTAC) submitted copies of questionnaires to the City which provided valuable information to the City staff relating to their special needs during the relocation process. One of the questions which was discussed in the questionnaires related to the balance of the mortgages which remained on the homes located at Avalon Carson Mobilehome Park. A total of 40 residents responded to the questionnaires and 22 (52%) reported that they still have mortgages to pay off on their homes when the park closes.

Section 6. Based on the evidence, both oral and written, received at the public hearings, the City Council determines that specific spaces in Avalon Carson Mobilehome Park *are ineligible* for relocation benefits as shown in the following findings:

A. Waiver Agreements

In March, 1988, the owners of Avalon Carson Mobilehome Park advised all residents that the park would be closing. Subsequently, all new residents were asked to sign waiver agreements acknowledging that they were renting on a

short-term basis with full and complete knowledge that the park would be closing soon and that they *would not* be eligible for any relocation benefits. Residents occupying the following spaces are not eligible for relocation benefits:

| | | | | | |
|---|---|---|---|---|---|
| 1-3 | FRT-1 | B-33 | C-18 | C-43 | F-17 |
| 1-6 | B-7 | B-34 | C-22 | C-45 | F-18 |
| 4-2 | B-8 | B-36 | C-24 | C-50 | F-19 |
| 4-6 | B-10 | B-39 | C-28 | D-6 | F-22 |
| 4-18 | B-21 | C-3 | C-30 | D-10 | |
| A-1 | B-25 | C-5 | C-32 | D-31 | |
| A-2 | B-27 | C-9 | C-34 | F-2 | |
| A-12 | B-32 | C-10 | C-38 | F-5 | |
| A-20 | | C-14 | C-42 | F-12 | |

B. Vacant Spaces and Apartment Renter

The park owner has notified the City that the following spaces are vacant; therefore, these spaces are not eligible for relocation benefits:

| | | | |
|---|---|---|---|
| A-19 | B-45 | C-46 | F-6 |
| B-3 | C-16 | C-49 | F-7 |
| B-6 | C-21 | D-1 | F-15 |
| B-15 | C-26 | D-4 | |
| B-28 | | | |

One of the apartments located above a laundry facility is occupied by Vincent Riese. Since the apartment rental unit is not a mobilehome, trailer coach or recreational vehicle space, the resident is technically not eligible for relocation benefits. Therefore, relocation benefits are not provided for residents of apartments located at Avalon Carson Mobilehome Park.

C. Unoccupied Mobilehomes

The park owner has notified the City that the following spaces have mobilehomes situated on the sites; however, the homes are unoccupied. Since the intent of the RIR Ordinance is to provide relocation benefits for eligible resident owners residing at Avalon Carson Mobilehome Park, relocation benefits are not provided for these spaces:

Space 4-16

The previous resident, George Charland, has been deceased since January 8, 1989, according to a resident survey. The mobilehome is unoccupied. Doris Murray is the nonresident owner who resides in Torrance, California.

Space C-2

On August 14, 1990, the park owner notified staff that Ada Robbins lives at a Redondo Beach address. Staff was informed that the prior resident does not live at the mobilehome any longer.

Space D-8

The residents have abandoned the mobilehome and it is under the ownership of Green Tree Acceptance Company, the legal owner. The mobilehome is unoccupied.

Space D-30

In a letter dated September 26, 1990, the park owner informed the City that Mr. Joseph Suddreth had moved to Torrance, California. The mobilehome is unoccupied.

D. Renter/Occupants

The park owner has notified the City that the following spaces have mobilehomes which are occupied by residents who do not own the coaches. In some cases, these residents are renters to the nonresident owners who *do not* reside in the park. Relocation benefits are recommended for the renter (or resident) household to provide the lump sum of $1,950 for Spaces 4-20 and D-2 to assist the residents in moving to alternative housing. In this case, no additional relocation benefits are provided for the nonresident owners of the mobilehomes for the relocation of the mobilehomes.

Space 4-20

On August 14, 1990, the park owner informed the City that the mobilehome is occupied by a sub-renter. Albert Queiros is the nonresident owner who does not reside in the park.

Space D-2

On July 5, 1989, Robert and James Marriott signed a statement that they were not the original tenants of Space D-2, as registered with the park management, but are sub-tenants of the original approved tenant. The legal and registered owners, Donald and David Marriott, do not reside in the park.

E. Occupants With Non-Continuous Residency

The intent of the RIR Ordinance is to provide relocation benefits for resident owners of trailer coaches and recreational vehicles when these homes are used as the occupant's primary place of residence as established by nine (9) months

continuous residency, and mobilehomes as defined in Section 798.3 of the California Civil Code.

Space C-6

In a letter dated September 25, 1990, the park owner informed the City that Cliff Peterson occupies Space C-6 on a part-time basis, with an alternative address in Wrightwood, California. Mr. Peterson has an 8' x 22' Prowler Travel Trailer and he *does not* reside in the park on a continuous basis. Therefore, relocation benefits are not provided for the relocation of the travel trailer.

Space C-20

Under normal circumstances, Jack and Majorie Raine occupy Space C-20 from December to the end of March each year. The remainder of the year is generally spent in Colbran, Colorado. Space C-20 is occupied by an 8' x 26' Nu-Wa travel trailer; however, the residents do not reside in the park on a continuous basis. Therefore, relocation benefits are not provided for the relocation of the travel trailer.

Section 7. Based on the abovementioned findings, the City Council finds that the relocation assistance proposed in the applicant's RIR is inadequate. Therefore, the City Council approves Relocation Impact Report No. 2-88 pertaining to the closure of Avalon Carson Mobilehome Park subject to the following conditions:

A. Renter Occupant & Nonresident Owner Relocation Benefits

In determining rental expenses, staff has utilized a $550 per month rent estimate. In many cases, apartment owners require first and last month's rent and a security deposit of $150. Therefore, although *no* benefits are provided for the nonresident owners of the mobilehomes for the relocation of the units, the renter or resident households located in Spaces 4-20 and D-2 shall each receive the lump sum of $1,250 towards these costs to assist in the relocation to other housing. In addition, it is provided that each of the abovementioned households receive the lump sum of $700 moving expenses for the packing, transportation and unpacking of their personal belongings at an alternate housing location as follows:

| Space Number | Estimated Rents (Plus) Security Deposits | + | Personal Items Moving Expenses | = | Payment To The Renter or Resident Household |
|---|---|---|---|---|---|
| 4-20 | $1,250 | | $700 | | $1,950 |
| D-2 | 1,250 | | 700 | | 1,950 |
| Total | $2,500 | | $1,400 | | $3,900 |

B. Resident Owner Relocation Benefits

The following is a list of mitigation measures as provided for relocation assistance to the resident

owners of trailer coaches, recreational vehicles and mobilehomes located in Avalon Carson Mobilehome Park:

1. Moving Expenses

   During the development of personal item moving expenses for the proposed closure of El Rancho Mobilehome Park, Port & Flor, Inc. contacted two (2) licensed professional movers who were asked to give estimates on the moving of personal items within a 30-mile radius. The movers estimated that the "cost to pack and move a one bedroom would range between $500 and $600, while the cost to move a two bedroom would range between $600 and $700." Therefore, staff utilized a $600 moving estimate for the moving of personal items for all trailer coaches and recreational vehicles, and staff utilized a $700 moving estimate for personal items for all mobilehomes.

   In determining the recommended moving expenses, staff has added the moving estimates for personal items to the moving estimates proposed by Best-Way Movers and rounded the totals upwards to the nearest one hundred dollars. The procedure was done for all trailer coaches, recreational vehicles and mobilehomes which are provided with relocation benefits.

   All moving costs in this section will include the tear-down and set-up of all trailer coaches, recreational vehicles and mobilehomes (and external moveable improvements) in the moving expenses. Such moveable improvements include, but are not limited to, the costs of relocating awnings, carports, storage sheds, porches, skirting, etc. for each site. The applicant shall not be responsible for bringing the units or external improvements up to code during the relocation

process. All improvements which are not moveable because of age or lack of compliance with current building standards will not be installed at the new locations.

The applicant shall pay each household (of resident owners) lump sum payments towards the costs of moving the units and personal property and towards the costs of higher rents and other expenses at a new location as shown in the following table:

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| Space Number | Best-Way Moving Estimates | + | Personal Items Moving Estimates | = | Moving Expense Payments |
|---|---|---|---|---|---|
| 1-1 | $ 4,500 | | $ 700 | | $ 5,200 |
| 1-2 | 7,700 | | 700 | | 8,400 |
| 1-4 | 7,700 | | 700 | | 8,400 |
| 1-5 | 4,500 | | 700 | | 5,200 |
| 2-1 | 7,500 | | 700 | | 8,200 |
| 2-2 | 6,500 | | 700 | | 7,200 |
| 2-3 | 5,000 | | 700 | | 5,700 |
| 2-4 | 7,500 | | 700 | | 8,200 |
| 2-5 | 7,500 | | 700 | | 8,200 |
| 2-6 | 7,500 | | 700 | | 8,200 |
| 3-1 | 8,000 | | 700 | | 8,700 |
| 3-2 | 6,000 | | 700 | | 6,700 |
| 3-3 | 6,000 | | 700 | | 6,700 |
| 3-4 | 5,000 | | 700 | | 5,700 |
| 3-5 | 4,500 | | 700 | | 5,200 |
| 3-6 | 4,500 | | 700 | | 5,200 |
| 4-1 | 7,500 | | 700 | | 8,200 |
| 4-3 | 5,000 | | 700 | | 5,700 |

| | | | |
|---|---|---|---|
| 4-4 | 5,200 | 700 | 5,900 |
| 4-5 | 7,000 | 700 | 7,700 |
| 4-8 | 6,000 | 700 | 6,700 |
| 4-10 | 7,200 | 700 | 7,900 |
| 4-12 | 4,500 | 700 | 5,200 |
| 4-14 | 4,000 | 700 | 4,700 |
| A-3 | 500 | 600 | 1,100 |
| A-4 | 4,500 | 700 | 5,200 |
| A-5 | 4,200 | 700 | 4,900 |
| A-6 | 5,000 | 700 | 5,700 |
| A-7 | 4,500 | 700 | 5,200 |
| A-8 | 4,500 | 700 | 5,200 |
| A-9 | 4,500 | 700 | 5,200 |
| A-10 | 4,500 | 700 | 5,200 |
| A-11 | 5,000 | 700 | 5,700 |
| A-14 | 5,000 | 700 | 5,700 |
| A-15 | 6,500 | 700 | 7,200 |
| A-16 | 6,500 | 700 | 7,200 |
| A-17 | 4,500 | 700 | 5,200 |
| A-18 | 4,500 | 700 | 5,200 |
| B-2 | 4,500 | 700 | 5,200 |
| B-4 | 500 | 600 | 1,100 |
| B-5 | 500 | 600 | 1,100 |
| B-9 | 500 | 600 | 1,100 |
| B-11 | 4,500 | 700 | 5,200 |
| B-17 | 4,500 | 700 | 5,200 |
| B-19 | 6,000 | 700 | 6,700 |
| B-30 | 4,500 | 700 | 5,200 |
| B-31 | 5,000 | 700 | 5,700 |
| B-35 | 500 | 600 | 1,100 |
| B-37 | 500 | 600 | 1,100 |
| B-41 | 4,500 | 600 | 5,100 |
| B-43 | 4,500 | 700 | 5,200 |
| B-49 | 500 | 600 | 1,100 |
| B-51 | 4,500 | 700 | 5,200 |
| B-53 | 5,000 | 700 | 5,700 |
| B-57 | 1,000 | 600 | 1,600 |

| | | | |
|---|---|---|---|
| B-59 | 4,500 | 700 | 5,200 |
| C-7 | 500 | 600 | 1,100 |
| C-8 | 500 | 600 | 1,100 |
| C-12 | 500 | 600 | 1,100 |
| C-23 | 500 | 600 | 1,100 |
| C-36 | 500 | 600 | 1,100 |
| C-40 | 500 | 600 | 1,100 |
| C-44 | 500 | 600 | 1,100 |
| C-47 | 500 | 600 | 1,100 |
| C-48 | 500 | 600 | 1,100 |
| D-3 | 6,500 | 700 | 7,200 |
| D-5 | 6,500 | 700 | 7,200 |
| D-7 | 6,500 | 700 | 7,200 |
| D-9 | 6,500 | 700 | 7,200 |
| D-11 | 6,500 | 700 | 7,200 |
| D-12 | 6,500 | 700 | 7,200 |
| D-14 | 6,500 | 700 | 7,200 |
| D-15 | 6,500 | 700 | 7,200 |
| D-16 | 6,500 | 700 | 7,200 |
| D-17 | 6,500 | 700 | 7,200 |
| D-18 | 6,500 | 700 | 7,200 |
| D-19 | 6,500 | 700 | 7,200 |
| D-20 | 6,500 | 700 | 7,200 |
| D-21 | 6,500 | 700 | 7,200 |
| D-22 | 6,500 | 700 | 7,200 |
| D-23 | 6,500 | 700 | 7,200 |
| D-24 | 6,500 | 700 | 7,200 |
| D-25 | 6,500 | 700 | 7,200 |
| D-26 | 6,500 | 700 | 7,200 |
| D-27 | 6,500 | 700 | 7,200 |
| D-28 | 6,500 | 700 | 7,200 |
| D-29 | 6,500 | 700 | 7,200 |
| F-1 | 500 | 600 | 1,100 |
| F-3 | 500 | 600 | 1,100 |
| F-4 | 500 | 600 | 1,100 |
| F-8 | 500 | 600 | 1,100 |
| F-9 | 500 | 600 | 1,100 |

| | | | | |
|---|---|---|---|---|
| F-10 | 500 | | 600 | 1,100 |
| F-11 | 500 | | 600 | 1,100 |
| F-13 | 500 | | 600 | 1,100 |
| F-14 | 500 | | 600 | 1,100 |
| F-16 | 500 | | 600 | 1,100 |
| F-20 | 500 | | 600 | 1,100 |
| F-21 | 500 | | 600 | 1,100 |
| Total: | $420,000 | + | $66,300 | = $486,300 |

The payments to the resident owners as shown above shall be increased as necessary to cover the actual minimum costs of physically moving the coaches, including the tear-down and set-up of all moveable appurtenances (improvements) and packing and unpacking costs for personal property, which must be relocated to the alternate housing. If additional payments (in excess of the lump sum payments) are to be paid to the resident owners, it is the responsibility of the resident owners to submit copies of the moving estimates to the applicant or the Relocation Assistance Specialist for approval prior to contractural agreements with the moving companies or the payment of any deposits or similar fees to the moving companies. Any disputes shall be submitted to the Community Development Department for resolution.

C. Dislocation Allowances and Payments to Qualified Households

1. The applicant shall pay each household of resident owners, which qualify for relocation benefits, an additional sum of $200 towards the costs of advertising, telephone expenses and other miscellaneous expenses associated with the Avalon Carson Mobilehome Park closure, and

2. The applicant shall pay each household of resident owners which has one or more residents who are 62 years of age or older (and meet the current Department of Housing and Urban Development Standards for low or moderate income), the sum of $1,000. This payment shall be provided to all qualified resident owner households in addition to all other relocation benefits, and

3. The applicant shall pay each household of resident owners which has one or more residents who are handicapped or disabled (as certified by an accredited physician or by any local, state or federal agency), the sum of $1,000. This payment shall be provided to all qualified resident owner households in addition to all other relocation benefits.

D. Relocation Specialist Services

The applicant shall provide a Relocation Assistance Specialist to assist the resident owners in finding mobilehome and trailer spaces in comparable parks or other appropriate residential housing. The Relocation Specialist shall be selected from an agency specializing in relocation assistance activities and the specialist shall be subject to approval by the Community Development Director or his designee. The Relocation Specialist must make the relocation services available to all resident owners during sufficient hours to adequately serve the needs of the displacees, until the six (6) month park closure period has ended or the park is closed, if the time period is extended longer than six (6) months. The Relocation Specialist shall be approved by the City and paid for by the applicant.

The duties of the Relocation Specialist shall include, but not be limited to, the following:

1. Development of a program to conduct meetings with individual resident owners to completely review the relocation benefits adopted by the City and determine the specific needs of the residents.

2. Survey mobilehome and trailer parks located in the South Bay-Long Beach area and other areas of Los Angeles County and Orange County within a 50-mile radius of Avalon Carson Mobilehome Park to determine the current availability of comparable spaces and the availability of new and used mobilehomes and travel trailers which may be for rent or purchase in comparable parks.

3. Survey the abovementioned areas to determine the availability of comparable apartments and condominiums (similar in size to resident's unit) for rent or purchase, if sufficient mobilehome and/or travel trailer spaces are not available in comparable parks.

4. Provide referral services to federally assisted housing or wherever referrals to social service agencies are needed.

5. Provide transportation services for elderly, handicapped or disabled residents to inspect new mobilehome or trailer spaces or alternative housing as may be necessary and appropriate for relocation assistance.

6. Maintain individual files on each mobilehome and travel trailer space in the park to document the progress of the relocation process, including benefit payment receipts, written offers of comparable mobilehome or travel trailer spaces and other related information.

7. Administer the payment of relocation benefits to ensure the efficient and orderly disbursement of

payments to the residents. Provide documentation to the City as required.

8. Verify all household in Avalon Carson Mobilehome Park which contain residents 62 years of age or older and households which contain handicapped or disabled residents to determine if the households qualify for additional payments. Ensure that these residents are informed of these additional benefits if it is determined they qualify for said relocation benefits.

E. Comparable Space Provision

It is the responsibility of the applicant and the applicant's representative, the Relocation Assistance Specialist, to make every "reasonable" effort to relocate the residents of each space in the park during the six (6) month park closure period.

The Relocation Specialist is specifically responsible for providing each resident household with the opportunity to relocate their trailer coach, recreational vehicle or mobilehome to a comparable space within a 50-mile radius. For the purposes of this Relocation Impact Report, a comparable space shall constitute an alternate park with standards and amenities similar to Avalon Carson Mobilehome Park as follows:

1. The alternate park must be able to provide a space adequate to relocate the resident's existing coach and all movable improvements.

2. The management of the alternate park must be willing to accept the resident's coach as acceptable for relocation in regard to the age, style and physical condition of the unit. (Minor repairs and repainting may be necessary).

3. The amenities of the alternate park must be equal or greater than the Avalon Carson Mobilehome Park; however, the amenities should not be so extensive that the new rents are unreasonably higher because of the added on-site facilities in the new park.

4. The alternate park is not required to be located in a rent-controlled community; however, the rents should be reasonable and should be in reasonable conformity with rents for similar parks in the general area.

5. The standards at the alternate park must be compatible with the standards at Avalon Carson Mobilehome Park relating to family or senior residency acceptance at the new park, pet keeping regulations and other conditions that may restrict the resident from enjoying a similar life style in the new location.

6. The parking facilities at the alternate park must be equal or greater than those at Avalon Carson Mobilehome Park to accommodate the resident's existing vehicles.

7. The alternate park should provide reasonable proximity to similar shopping and medical facilities in the general area of the new location for the convenience of the resident.

These requirements are generally not applicable to travel trailers and recreational vehicles which are generally not eligible for Last Resort Benefits as provided in Section 7(G), because these units have many practical uses when they are located outside of a mobilehome park and only used for recreational purposes. On the other hand, mobilehomes generally have no practical use when they are stored outside of a mobilehome park, since their main value is to be

used as a single-family residence in a permanent location.

F. The Relocation Specialist shall allow the resident a minimum of five (5) days to visit the alternate comparable park and make a decision whether or not to accept the new location. It is the responsibility of the Relocation Specialist to document in writing all offers for comparable spaces. If the resident owners refuse to accept a valid, documented offer to relocate the coach to a space in a comparable park, within the six (6) month park closure period, the resident owner of the trailer coach or mobilehome (which are specifically designated to be eligible for last resort benefits) will forfeit all rights to claims for such benefits. In this case, the resident owners will only be eligible for the appropriate lump sum (moving expenses) payment, the Dislocation Allowance and the additional payments for the elderly, handicapped or disabled (for those who qualify).

However, comparable spaces or Last Resort Benefits for trailer coaches are provided under Section 7(G) to displace residents of the following trailer coaches based on the following findings:

1. On August 16, 1990 and September 27, 1990, staff inspected Spaces A-3, B-41, B-57 and C-12 to determine if these coaches have special characteristics that would qualify these units as homes which *cannot* be utilized as recreational vehicles because they require a permanent site for use.

2. The homes located in Spaces A-3, B-41, B-57 and C-12 do not technically qualify as "mobilehomes" because the square footage of each coach is less than 320 square feet as required by Section 18007 of the Health and Safety Code. However, it is staff's opinion that the park trailers or trailer coaches located in

Spaces B-41, B-57 and C-12 have special characteristics that *do not* allow these homes to be utilized as recreational vehicles. Since these special characteristics will make these units more difficult to transport and considerably more difficult to sell, they have been included for relocation benefits under Section 7(G).

3. However, it has also been noted that Space A-3 contains a smaller (8′ x 23′-6″) Kenskill which is equipped with propane tanks to provide a self-contained gas supply. Although it is understood that the coach does not have holding tanks for toilet facilities or fresh water and the coach has been utilized for years as the permanent home of the resident, it is still classified as a "travel trailer" under Section 799.24(E) of the California Civil Code. In this case, the coach is suitable for certain types of recreational activity if the unit was rehabilitated for transportation on the highway.

G. Payment of Last Resort

All coaches which are designated as "mobilehomes" in Section 798.3 of the California Civil Code and three (3) trailer coaches, as described in this section and specified in Section 7(F), shall be eligible for Last Resort Benefits. If there is not at least one (1) comparable space available for the "mobilehomes" as defined by the Civil Code Section 798.3 which are occupied by a resident owner(s), and for the three (3) trailer coaches specified above in Section 7F, during the six (6) month park closure period following the adoption of this Resolution, the resident owner(s) shall receive "Last Resort Benefits." These benefits shall consist of either Option No. 1 or Option No. 2, as set forth below.

"Last Resort Benefits are based on appraisals. However, in some cases, during the appraisal process, the

appraiser was unable to evaluate the interiors of the mobilehomes due to various reasons, such as an inability to contact the residents of some mobilehomes to set up appointments for the inspection of their coaches. In these cases, the residents of mobilehomes which did not receive an appraisal which included the interiors of their coaches will have a thirty (30) day time period to request an additional appraisal of their homes. In this case, the resident must notify the City's Community Development Department, in writing, within thirty (30) days after the Notice of Termination is given to the park residents that the six (6) month park closure period has begun, that he or she wants to have the additional appraisal completed on their home.

Upon receipt of this request from the park residents, the City will notify the applicant who will be responsible for obtaining the revised appraisal and submit it to the City's Community Development Department for approval within a sixty (60) day time period after the Notice of Termination is given to the park residents. The appraisals shall be paid for by the applicant and said appraisals shall be prepared by utilizing the replacement cost appraisal method. Copies of the revised appraisals shall be transmitted to the resident households of those requesting the new appraisals at the end of the sixty (60) day time period. If the new appraisals result in higher on-site values ,the new appraisals shall be utlized for calculating Last Resort Benefits in Option Nos. 1 and 2 of this Resolution. Any disputes by the applicant or the residents relating to these appraisals shall be resolved by the Director of Community Development."

Option No. 1

Under this option, relocation benefits are provided to displaced residents of mobilehomes and trailer coaches based on the following findings:

1. The 100% of Value in Place (based on the depreciated replacement cost appraisals prepared for this RIR) payment is provided for the resident owners who are eligible for Last Resort Benefits to provide compensation for the on-site value of their mobilehomes or trailer coaches and improvements such as awnings, carports, landscaping and similar appurtenances. In each case, the resident owners must transfer the clear title of the mobilehomes or trailer coaches and improvements to the applicant for disposal of the units; and

2. The resident owners who are eligible for Last Resort Benefits and have mortgages which exceed the 100% of Value in Place (as defined above) payments shall be eligible for an alternative payment not to exceed 90% of an appraisal based on the comparable sales value approach for determining on-site values. However, the alternative payments shall not exceed the remaining mortgages on the coaches. This additional relocation benefit is necessary to ensure that resident owners with outstanding mortgages will receive adequate reimbursement to pay off the remaining balances on the loans to the finance company and to ensure that clear legal title may be transferred to the applicant to allow for removal of the units from the park.

Pursuant to a letter, dated March 4, 1988 from Talley and Associates, Inc., a consultant representing the park owner, first notification of the park closure had been mailed to the residents during that same week. Therefore, only mortgages which were obtained prior to March 4, 1988, will be eligible for this option.

If a resident owner has a mortgage which exceeds 100% of the Value in Place, the resident owner must provide appropriate documentation of the mortgage to the Relocation Assistance Specialist and provide the Specialist with a written request to have an additional Appraisal Report prepared which utilizes "comparable sales" to determine on-site values. The appraiser must be selected by the Director of Community Development or his designee and all costs are to be paid for by the applicant.

3. The resident owners who are eligible for Last Resort Benefits will also receive an additional $1,950 payment for housing and relocation expenses. It has been determined that these monies are required for relocation expenses to provide for first and last months' rent, security deposits, packing and unpacking of personal items and the transportation of these items to the new housing location; and

4. The resident owners will also receive the sum of $200 towards the costs of advertising, telephone expenses and other miscellaneous relocation expenses and be eligible for additional payments for the elderly, handicapped or disabled, for those who qualify.

5. The resident owners *will not* receive the lump sum (moving expenses) payment designated in Section 7 (B) of this Resolution. The payment schedule is as follows:

| Space Number | 100% of Value in Place | + | Payment of Housing and Relocation Expenses | = | Payment to the Resident Owner Household |
|---|---|---|---|---|---|
| 1-1 | $13,000 | | $1,950 | | $14,950 |
| 1-2 | 33,700 | | 1,950 | | 35,650 |
| 1-4 | 15,375 | | 1,950 | | 17,325 |
| 1-5 | 10,150 | | 1,950 | | 12,100 |
| 2-1 | 14,225 | | 1,950 | | 16,175 |
| 2-2 | 12,200 | | 1,950 | | 14,150 |
| 2-3 | 10,500 | | 1,950 | | 12,450 |
| 2-4 | 35,650 | | 1,950 | | 37,600 |
| 2-5 | 31,550 | | 1,950 | | 33,500 |
| 2-6 | 14,500 | | 1,950 | | 16,450 |
| 3-1 | 16,600 | | 1,950 | | 18,550 |
| 3-2 | 16,000 | | 1,950 | | 17,950 |
| 3-3 | 11,350 | | 1,950 | | 13,300 |
| 3-4 | 9,950 | | 1,950 | | 11,900 |
| 3-5 | 48,675 | | 1,950 | | 50,625 |
| 3-6 | 11,300 | | 1,950 | | 13,250 |
| 4-1 | 31,750 | | 1,950 | | 33,700 |
| 4-3 | 11,450 | | 1,950 | | 13,400 |
| 4-4 | 11,725 | | 1,950 | | 13,675 |
| 4-5 | 10,200 | | 1,950 | | 12,150 |
| 4-8 | 8,000 | | 1,950 | | 9,950 |
| 4-10 | 13,650 | | 1,950 | | 15,600 |
| 4-12 | 13,450 | | 1,950 | | 15,400 |
| 4-14 | 8,175 | | 1,950 | | 10,125 |
| A-4 | 18,100 | | 1,950 | | 20,050 |
| A-5 | 14,300 | | 1,950 | | 16,250 |
| A-6 | 12,150 | | 1,950 | | 14,100 |
| A-7 | 17,000 | | 1,950 | | 18,950 |

| | | | |
|---|---|---|---|
| A-8 | 12,500 | 1,950 | 14,450 |
| A-9 | 15,000 | 1,950 | 16,950 |
| A-10 | 12,000 | 1,950 | 13,950 |
| A-11 | 14,150 | 1,950 | 16,100 |
| A-14 | 13,650 | 1,950 | 15,600 |
| A-15 | 13,500 | 1,950 | 15,450 |
| A-16 | 10,250 | 1,950 | 12,200 |
| A-17 | 14,550 | 1,950 | 16,500 |
| A-18 | 12,300 | 1,950 | 14,250 |
| B-2 | 7,000 | 1,950 | 8,950 |
| B-11 | 11,300 | 1,950 | 13,250 |
| B-17 | 10,000 | 1,950 | 11,950 |
| B-19 | 10,200 | 1,950 | 12,150 |
| B-30 | 11,000 | 1,950 | 12,950 |
| B-31 | 13,875 | 1,950 | 15,825 |
| B-43 | 9,150 | 1,950 | 11,100 |
| B-51 | 12,250 | 1,950 | 14,200 |
| B-53 | 32,870 | 1,950 | 34,820 |
| B-59 | 10,000 | 1,950 | 11,950 |
| D-3 | 34,250 | 1,950 | 36,200 |
| D-5 | 25,500 | 1,950 | 27,450 |
| D-7 | 28,000 | 1,950 | 29,950 |
| D-9 | 24,500 | 1,950 | 26,450 |
| D-11 | 27,350 | 1,950 | 29,300 |
| D-12 | 22,450 | 1,950 | 24,400 |
| D-14 | 20,600 | 1,950 | 22,550 |
| D-15 | 27,280 | 1,950 | 29,230 |
| D-16 | 27,350 | 1,950 | 29,300 |
| D-17 | 21,000 | 1,950 | 22,950 |
| D-18 | 21,200 | 1,950 | 23,150 |
| D-19 | 25,420 | 1,950 | 27,370 |
| D-20 | 25,850 | 1,950 | 27,800 |
| D-21 | 29,600 | 1,950 | 31,550 |
| D-22 | 25,000 | 1,950 | 26,950 |
| D-23 | 35,850 | 1,950 | 37,800 |
| D-24 | 25,000 | 1,950 | 26,950 |
| D-25 | 29,000 | 1,950 | 30,950 |

| | | | |
|---|---|---|---|
| D-26 | 21,550 | 1,950 | 23,500 |
| D-27 | 30,775 | 1,950 | 32,725 |
| D-28 | 23,000 | 1,950 | 24,950 |
| D-29 | 25,000 | 1,950 | 26,950 |
| Total: | $1,295,745 | $134,550 | $1,430,295 |

Option No. 2

Under this option, relocation benefits are provided to displaced residents of mobilehomes based on the following findings:

1. The values for the mobilehomes or trailer coaches are derived from the depreciation tables in the Marshall & Swift Manual. Additional values were added to the appraisals for the transportation and set-up costs which were necessary to establish the coaches in the park. Appraisal values also included the addition of improvements to the mobilehome site such as awnings, carports, skirting, storage sheds, landscaping, etc. In many cases, the landscaping and other improvements are not moveable and the payment of 100% of the difference between the "Value in Place" and the "Value For Removal" is necessary to assist in compensating the resident owners for the losses of values associated with their homes and improvements located at the site when the coach is removed from the park; and

2. Moving expenses may be needed by the resident when the coach is relocated and storage fees may be needed to keep the coach in a secured storage facility until an appropriate buyer can be found or a mobilehome space becomes available; and

3. Personal moving expenses relating to the packing, unpacking, transportation and the storage of personal property while the mobilehome or trailer

coach is in storage may be incurred by the coach owners; and

4. Additional living expenses such as lodging, rental payments for an apartment, security deposits and related expenses may be incurred because the mobilehome or trailer coach is in transit or in temporary storage.

The payment shall consist of 100% of the difference between the "Value in Place" or "On-Site Value" and the "Value for Removal" or "Off-Site Value". The "Values in Place" shall be obtained from the appraisal report, utilizing the Marshall & Swift Manual, which was provided by John Martin-Harvey, the City's appraiser. The "Values for Removal" shall be obtained from the appraisal report, utilizing the Marshall & Swift Manual, which was provided by Joseph Lara, the review appraiser. In this case, the resident owner *will not* receive the lump sum (moving expenses) payment as designated in Section 7(B) of this Resolution, but retains the ownership of the coach. Finally, the resident owners will receive the $200 dislocation allowance and additional payments for the elderly, handicapped or disabled (for those who quality). The payment schedule is shown as follows:

| Space Number | Value in Place | - | Value for Removal | = | Payment to the Resident Owner House-hold |
|---|---|---|---|---|---|
| 1-1 | $13,000 | | $ 2,300 | | $10,700 |
| 1-2 | 33,700 | | 10,500 | | 23,200 |
| 1-4 | 15,375 | | 3,100 | | 12,275 |
| 1-5 | 10,150 | | 2,000 | | 8,150 |
| 2-1 | 14,225 | | 2,700 | | 11,525 |
| 2-2 | 12,200 | | 2,900 | | 9,300 |
| 2-3 | 10,500 | | 2,100 | | 8,400 |
| 2-4 | 35,650 | | 11,500 | | 24,150 |
| 2-5 | 31,550 | | 10,000 | | 21,550 |
| 2-6 | 14,500 | | 1,500 | | 13,000 |
| 3-1 | 16,600 | | 3,100 | | 13,500 |
| 3-2 | 16,000 | | 2,700 | | 13,300 |
| 3-3 | 11,350 | | 2,300 | | 9,050 |
| 3-4 | 9,950 | | 2,600 | | 7,350 |
| 3-5 | 48,675 | | 22,000 | | 26,675 |
| 3-6 | 11,300 | | 2,200 | | 9,100 |
| 4-1 | 31,750 | | 10,000 | | 21,750 |
| 4-3 | 11,450 | | 2,300 | | 9,150 |
| 4-4 | 11,725 | | 3,700 | | 8,025 |
| 4-5 | 10,200 | | 2,500 | | 7,700 |
| 4-8 | 8,000 | | 2,300 | | 5,700 |
| 4-10 | 13,650 | | 2,500 | | 11,150 |
| 4-12 | 13,450 | | 2,700 | | 10,750 |
| 4-14 | 8,175 | | 2,400 | | 5,775 |
| A-4 | 18,100 | | 3,700 | | 14,400 |
| A-5 | 14,300 | | 2,500 | | 11,800 |
| A-6 | 12,150 | | 2,900 | | 9,250 |
| A-7 | 17,000 | | 3,900 | | 13,100 |
| A-8 | 12,500 | | 2,800 | | 9,700 |

| | | | |
|---|---|---|---|
| A-9 | 15,000 | 2,500 | 12,500 |
| A-10 | 12,000 | 2,700 | 9,300 |
| A-11 | 14,150 | 3,300 | 10,850 |
| A-14 | 13,650 | 2,300 | 11,350 |
| A-15 | 13,500 | 3,100 | 10,400 |
| A-16 | 10,250 | 2,300 | 7,950 |
| A-17 | 14,550 | 2,900 | 1,650 |
| A-18 | 12,300 | 2,500 | 9,800 |
| B-2 | 7,000 | 1,500 | 5,500 |
| B-11 | 11,300 | 2,100 | 9,200 |
| B-17 | 10,000 | 2,000 | 8,000 |
| B-19 | 10,200 | 2,500 | 7,700 |
| B-30 | 11,000 | 2,200 | 8,800 |
| B-31 | 13,875 | 2,900 | 10,975 |
| B-43 | 9,150 | 2,100 | 7,050 |
| B-51 | 12,250 | 2,300 | 9,950 |
| B-53 | 32,870 | 9,800 | 23,070 |
| B-59 | 10,000 | 1,900 | 8,100 |
| D-3 | 34,250 | 6,500 | 27,750 |
| D-5 | 25,500 | 4,800 | 20,700 |
| D-7 | 28,000 | 4,900 | 23,100 |
| D-9 | 24,500 | 4,000 | 20,500 |
| D-11 | 27,350 | 5,000 | 22,350 |
| D-12 | 22,450 | 4,000 | 18,450 |
| D-14 | 20,600 | 4,000 | 16,600 |
| D-15 | 27,280 | 5,000 | 22,280 |
| D-16 | 27,350 | 4,200 | 23,150 |
| D-17 | 21,000 | 4,000 | 17,000 |
| D-18 | 21,200 | 4,500 | 16,700 |
| D-19 | 25,420 | 4,900 | 20,520 |
| D-20 | 25,850 | 4,500 | 21,350 |
| D-21 | 29,600 | 6,100 | 23,500 |
| D-22 | 25,000 | 4,700 | 20,300 |
| D-23 | 35,850 | 6,800 | 29,050 |
| D-24 | 25,000 | 4,900 | 20,100 |
| D-25 | 29,000 | 5,900 | 23,100 |
| D-26 | 21,550 | 4,000 | 17,550 |

| | | | |
|---|---|---|---|
| D-27 | 30,775 | 7,100 | 23,675 |
| D-28 | 23,000 | 4,700 | 18,300 |
| D-29 | 25,000 | 4,300 | 20,700 |
| Total: | $1,295,745 | $287,400 | $1,008,345 |

Last Resort Benefits for Trailer Coaches (Spaces B-41, B-57 and C-12)

During the appraisal process, it was staff's understanding that appraisal reports were only *required* for coaches which specifically qualified as "mobilehomes" under Section 798.3 of the California Civil Code. The appraiser was informed to only provide appraisals for mobilehome coaches which complied with the definitions as outlined in Section 798.3. However, during the appraisal process, the City's appraiser inadvertently completed an appraisal report for Space B-57.

The appraisal values for the trailer coach located in Space B-57 are listed as follows:

| | |
|---|---|
| Replacement Cost New | = $8,500 |
| Value in Place | = 5,575 |
| Value for Removal (Off-Site Value) | = 2,125 |
| Liquidation Value | = 600 |

Therefore, in accordance with the requirements of this Resolution, the applicant shall be responsible for obtaining appraisals by an independent appraiser for Spaces B-41, B-57 and C-12 and submitting them to the City's Community Development Department for approval within a thirty (30) day time period from the date of approval of this Resolution. The appraisals shall be paid for by the applicant and said

appraisals shall be prepared by utilizing the replacement cost appraisal method. Copies of each individual appraisal shall be transmitted to the resident households of all trailer coaches occupying Spaces B-41, B-57 and C-12 at the end of the thirty (30) day period. Any disputes from the applicant or the residents relating to these appraisals shall be resolved by the Director of Community Development.

If it is determined that there *is not* at least one (1) valid comparable space for each of the trailer coaches to relocate to during the six (6) month park closure period, or if it is determined that due to the age or physical condition of the unit, it cannot be relocated, the resident households of these spaces shall receive the Last Resort Benefits. In this case, the resident households occupying Spaces B-41, B-57 and C-12 shall have Option Nos. 1 and 2 of this Resolution to select from in determining the payments to be received.

H. Conclusion

All resident owners who receive the Last Resort Benefit payments and retain ownership of their mobilehomes, trailer coaches or recreational vehicles shall be responsible for removing the coaches from the Park within the six (6) month park closure period or later as mutually agreed upon with the park owner. The six (6) month park closure period shall begin after the park management has given all resident owners and non-resident owners, written notification of the termination of the park's operation, pursuant to Section 798.56(f) and 798.57 of the California Civil Code, but shall not commence prior to the date this Resolution becomes final.

Within fifteen (15) days of the approval of this Resolution, the applicant shall deposit and maintain a

minimum average daily balance of $50,000 in an interest bearing account to cover the initial cost of the payments set forth in the Resolution. The account shall be a joint account with the City and all disbursements and checks shall require the signature of both the applicant and the City's Director of Community Development or the Director's designee. The relocation payments set forth above shall be disbursed to residents within three (3) business days of the time they vacate the Park and may be disbursed prior to vacation provided that the resident provides assurance to the satisfaction of the Director of Community Development or his designee that arrangements to vacate the Park have been made and that advance disbursement is needed to pay relocation expenses.

If the relocation payments to the residents (as noted above) are delayed, the applicant shall pay each resident household an additional relocation benefit of $50 per diem for each calendar day in excess of the initial three (3) business day payment period. This additional relocation benefit is provided for lodging and any other expenses which may occur as a result of delays in the payment of required relocation benefits during the actual move of the residents and/or coaches to new locations. If the delay prevents relocation to a comparable space of one of the coaches which is eligible for Last Resort Benefits, the resident owner(s) shall be deemed eligible for the Last Resort Benefits.

I. The above described steps to mitigate the adverse impacts of the Park closure on displaced residents are reasonable and do not exceed the reasonable costs of relocation.

*Section 8.* The Park shall not be closed until all resident renters, resident owners and nonresident owners

have received the relocation assistance set forth above, and no resident may be required to move prior to the end of the six (6) month park closure period, which commences after the resident renters, resident owners and nonresident owners are given the Notice of Termination required by Section 798.56(f) and 798.57 of the California Civil Code. Said notice shall not be given prior to the date of adoption that this Resolution becomes final.

*Section 9.* The approval of the park closure provided by this Resolution shall become void unless the closure and all conditions set forth herein have been satisfied within 18 months of the date of this Resolution, unless extended pursuant to Section 9128.21 of the Carson Municipal Code.

*Section 10.* The applicant shall agree to all of the conditions by filing an Affidavit of Acceptance with the Community Development Department within thirty (30) days of the date of this Resolution, and submit proof to the Community Development Department of the recordation of the Affidavit of Acceptance in the Office of the Los Angeles County Recorder.

PASSED, APPROVED AND ADOPTED THIS 19TH DAY OF MARCH, 1991.

/s/ Sylvia L. Muise
MAYOR (ACTING)

ATTEST:

/s/ Helen S. Kawagoe
CITY CLERK

APPROVED AS TO FORM:

/s/ Rachelle Browne
ASSISTANT CITY ATTORNEY

JDM/kjl/2/005

STATE OF CALIFORNIA )
COUNTY OF LOS ANGELES ) ss.
CITY OF CARSON )

I, Helen S. Kawagoe, City Clerk of the City of Carson, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing resolution, being Resolution No. 91-014 was duly and regularly adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 19th day of March, 1991, and that the same was so passed and adopted by the following vote:

| | | |
|---|---|---|
| AYES: | COUNCIL MEMBERS: | McDonald, Mitoma, and Muise |
| NOES: | COUNCIL MEMBERS: | None |
| ABSTAIN: | COUNCIL MEMBERS: | Calas and DeWitt |
| ABSENT: | COUNCIL MEMBERS: | None |

/s/ Helen S. Kawagoe
City Clerk, City of Carson, California

## EXHIBIT "A"

## LEGAL DESCRIPTION

Parcel 1:

Lot 54 and the east 150 feet of Lot 53 of Tract No. 2982 in the City of Carson, in the County of Los Angeles, State of California, as per map recorded in Book 35, page 31 of Maps, in the Office of the County Recorder of said county.

Except there from the west 60 feet of the north 140 feet of the east 150 feet of said Lot 53.

Also, except there from the northerly 20 feet of said Lot 54 and the Northerly 20 feet of the easterly 90 feet of said Lot 53.

Parcel 2:

The south 522.53 feet of the east 100 feet of the west 180 feet of Lot 53 of Tract No. 2982, in the City of Carson, in the County of Los Angeles, State of California, as per map recorded in Book 35, Page 31 of Maps, in the Office of the County Recorder of said county.

Parcel 3:

The east one half of the north 66 feet of Lot 38 of Tract No. 2982, in the City of Carson, in the County of Los Angeles, State of California, as per map recorded in Book 35, Page 31 of Maps, in the Office of the County Recorder of said county.

[Diagram Of Avalon-Carson Mobilehome Park
Omitted In Printing]

2/1 B074046 – S038593

(Filed May 12, 1994)

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

---

DARRYL WONG et al., Appellants

v.

CITY COUNCIL OF THE CITY
OF CARSON et al., Respondents

---

Appellants' petition for review GRANTED.

Baxter, J. did not participate.

Lucas
Chief Justice

Mosk
Associate Justice

Arabian
Associate Justice

George
Associate Justice

Associate Justice

Associate Justice

Associate Justice

No. 2/1 B074046 – ~~S038953~~ S038593

(Filed May 11, 1995)

IN THE SUPREME COURT OF CALIFORNIA

IN BANK

---

DARRYL WONG et al., Appellants

v.

CITY COUNCIL OF THE CITY OF CARSON et al., Respondents

---

Pursuant to rule 29.4(c), California Rules of Court, the above-entitled review is DISMISSED and cause is remanded to the Court of Appeal, Second Appellate District, Division One.

Baxter, J. did not participate.

Chief Justice

Mosk
Associate Justice

Kennard
Associate Justice

Arabian
Associate Justice

George
Associate Justice

Werdegar
Associate Justice

Associate Justice

GLENN R. WATSON
City Attorney
City of Carson

**RICHARDS, WATSON & GERSHON**
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Los Angeles, California 90071-1469
(213) 626-8484

Attorneys for Respondents
City of Carson, et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

| | |
|---|---|
| DARRYL WONG,<br><br>Plaintiff and Petitioner,<br><br>v.<br><br>PATRICK D. BROWN, in his capacity as Director of Community Development, CARSON DEPARTMENT OF COMMUNITY DEVELOPMENT, CARSON PLANNING COMMISSION, CITY COUNCIL OF THE CITY OF CARSON and THE CITY OF CARSON,<br><br>Defendants and Respondents. | Case No. 707 227<br><br>JUDGMENT DENYING PETITION FOR WRIT OF MANDATE<br><br>(Filed June 8, 1989) |

This matter was tried regularly in Department 85 of the above-entitled court, the Honorable Kurt J. Kewin, Judge Presiding, on May 4, 1989. Plaintiff/Petition ("Petitioner") appeared through his attorneys of record, Gronemeier, Barker & Huerta by Neil J. Barker. Defendants/Respondents ("Respondents") appeared through their attorneys of record, Richards, Watson & Gershon, a Professional Corporation, by Rochelle Browne and Christi Hogin.

The court, having read and considered the briefs and the Record submitted by respondents, having heard and considered the arguments of counsel, and being fully advised in the premises.

THE COURT HEREBY FINDS, ORDERS AND ADJUDGES:

1. The petition for writ of mandate is denied.

2. The petitioner shall pay costs to respondents in the amount of $_____.

3. The Clerk shall enter this judgment.

DATED: JUN 08 1989

/s/ Kurt Lewin
Kurt J. Lewin
Judge of the Los Angeles
Superior Court

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| DARRL WONG, WILLIE WONG, and DELPHINE WONG,<br><br>Plaintiffs,<br><br>v.<br><br>CITY OF CARSON, a Municipal Corporation, CITY COUNCIL OF THE CITY OF CARSON, and PLANNING COMMISSION OF THE CITY OF CARSON,<br><br>Defendants. | CASE NO. CV 91-2721-LEW<br><br>ORDER GRANTING MOTION OF DISMISS<br><br>(Filed July 29, 1992) |

TO ALL PARTIES AND THEIR COUNSEL:

PLEASE TAKE NOTICE,

Defendants' Motion to Dismiss came on for hearing before the Honorable Laughlin E. Waters, Senior United States District Judge, on July 22, 1991. Based on the documents filed for these motions, the oral arguments, and case filed, the Court finds as follows:

Facts:

Plaintiffs have owned and operated the Avalon Carson Mobilehome Park [hereinafter "the park"] since June of 1979. Plaintiffs have been trying to close the park since 1988 in order to sell it for development. After various disputes and a public hearing, the Carson City Council adopted Resolution No. 91-014 on March 19, 1991,

approving closure of the park subject to certain conditions designed to mitigate the impact on displaced residents. Plaintiffs claim that performance of the conditions imposed would result in an unconstitutional taking of property. They additionally claim that certain of the resolution's requirements violate due process, are unconscionable, and interfere with their Thirteenth Amendment right to be free of involuntary servitude.

Resolution No. 91-014 was adopted pursuant to a Carson conversion ordinance applicable to mobile home park owners who desire to convert their park to another use. Carson Municipal Code [hereinafter "CMC"] Sec. 9128.21 (West 1983). This ordinance implements California Government Code Section 65863.7, which attempts to mitigate the adverse impacts on displaced mobile home park residents by providing for relocation benefits, not to exceed the "reasonable costs of relocation," to be paid by the park owners. The purpose of these provisions is to address the investments made in mobile homes by park residents and the problems encountered by displaced residents who frequently cannot move their mobile homes because of the severe shortage of replacement spaces in most localities and the high cost and difficulty of moving a mobile home when an alternate space can be found. *See* Cal. Civ. Code Sec. 798.55 (West 1982 & Supp. 1992).

Discussion:

A. Takings Claims

In the complaint, plaintiffs primarily allege an "as applied" physical takings claim as opposed to a facial

takings claim. Yet in subsequent leadings, plaintiffs contend that they have also made a facial physical takings claim. Whatever the case, the "as applied" claim is dismissed as unripe since plaintiffs have failed to exhaust state remedies. To the extent that plaintiffs have alleged a facial takings claim, that is dismissed as well pursuant to *Yee v. City of Escondido,* 112 S.Ct. 1522 (1992) and to the statute of limitations.

For both the facial and "as applied" takings claims, plaintiffs allege that Carson's rent control ordinance, which strictly limits the amount of rent mobile home park owners can charge new tenants, transfers a possessory interest in the property from the owners to the tenants. On this theory, tenants can convert their possessory interests to cash when selling their mobile homes as buyers will be willing to pay a premium for mobilehomes located in a rent-controlled park. According to plaintiffs, the ordinance is facially invalid as this transfer of interest allegedly violates the Fifth and Fourteenth Amendments. Carson has violated these same amendments in then applying the ordinance to plaintiffs' park via the resolution which sets out what plaintiffs must do to close the park and requires them pay to the displaced tenants the premium mentioned above.

Defendants argue that plaintiffs' facial challenge must be dismissed under res judicata. Apparently the state court had denied plaintiffs' petition for writ of mandate which raised the facial takings claim. Since the petition was denied without an opinion, however, this court cannot know whether the action was decided on procedural grounds or on its merits. Under California law, a claim is barred by res judicata only if the merits of

the issues were tried and determined, and the parties were the same or substantially the same. *In re Marriage of Hight,* 67 Cal. App. 3d 498, 502 (1977).

Yet, plaintiffs' facial takings allegation is time barred and fails to state a claim according to recent United States Supreme Court law. Since plaintiffs brought this claim pursuant to 42 U.S.C. § 1983, the one year/three year statute of limitations for facial takings claims applies. *De Anza Properties, Ltd. v. County of Santa Cruz,* 936 F.2d 1084 (9th Cir. 1991). According to *De Anza,* the statute of limitations for all takings claims pursuant to § 1983 filed after the U.S. Supreme Court decision in *Wilson v. Garcia,* 471 U.S. 261 (1985) is either one year after the decision in *Wilson* or three years after the date of the taking for takings occurring prior to *Wilson. Id.* at 1085. The statute of limitations starts to run the date the challenged ordinance is enacted. *Id.* at 1086. Because Carson's ordinance was adopted in 1982, plaintiffs' facial claim is time barred.

In *Azul Pacifico, Inc. v. City of Los Angeles,* Judge Kozinski ruled that takings claims, such as the one made by the Wongs, state a claim not only under § 1983 but also directly under the takings clause of the Constitution. *Azul Pacifico,* 948 F.2d 575, 586 (9th Cir. 1991). Judge Kozinski then held that the Fifth Amendment is self-executing and, since the Constitution does not provide a statute of limitations, analogous state statutes should be adopted. *Id.* at 587. The Court adopted California's five-year statute for inverse condemnation claims to find that plaintiff's claim was not time-barred. Under this reasoning, plaintiffs' facial claim may not be time-barred.

Whether or not *Azul Pacifico's* reasoning is applicable here, plaintiffs' facial claim is no longer valid according to a recent Supreme Court decision, *Yee v. City of Escondido*, 112 S.Ct. 1522 (1992). In that decision, the Supreme Court settled a long-brewing dispute between the California courts and the Ninth Circuit, specifically Judge Kozinski. California refused to recognize mobile home owners' claims that rent control constituted a physical taking; Judge Kozinski disagreed. *See Hall v. City of Santa Barbara*, 833 F.2d 1270 (9th Cir. 1986), *cert. denied*, 485 U.S. 940 (1988); *Sierra Lake Reserve v. City of Rocklin*, 938 F.2d 951 (9th Cir. 1991), *petition for cert. filed*, (May 4, 1992). Finally, in *Yee* the Supreme Court rejected Judge Kozinski's reasoning to find that such mobile home rental ordinances do not involve a physical taking but "merely regulate [park owners'] *use* of their land by regulating the relationship between landlord and tenant." *Yee*, 112 S.Ct. at 1529.

Although the issues in *Yee* differ somewhat from those raised by plaintiffs here, the decision is clearly controlling and mandates dismissal of plaintiffs' facial claim. In *Yee*, the plaintiffs argued that the rent control ordinance gave the park tenants a possessory interest in the park which was monetized when they sold their homes to the next tenant. Here, plaintiffs similarly claim that the rent control ordinance makes the mobile homes more valuable and that the tenants cash in on this increased value either when they sell their homes or when the park owners must compensate them for the homes in closing the park. The claims are essentially the same in that the park owners contend that the regulations at issue make the tenants' mobile homes more valuable at

the park owners' expense. Yet as the Supreme Court held in *Yee*, such regulation does not effect a physical taking but merely regulates the relationship between the park owners and tenants.

*Yee* does not mean, though, that plaintiffs do not have an "as applied" physical takings claim. By challenging the contents of the resolution passed by Carson for plaintiffs' park, plaintiffs allege that, in their case, the government has gone too far in applying the ordinance. A recent California decision, *Kirkpatrick v. City of Oceanside*, 232 Cal. App. 3d 267 (1991), indicates that California does recognize "as applied" physical takings claims, such as plaintiffs' as viable. That court noted that the plaintiff mobile home park owners had asserted an "as applied" claim and had "alleged some facts which, if proven, would support a determination the government has gone too far and taken their property without just compensation."[1] *Id.* at 276.

Plaintiffs have not pursued their "as applied" claim in state court. According to federal law "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." *Williamson County*

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[1] In support of its holding, the court noted that the state case *Yee v. City of Escondido*, 224 Cal. App. 3d 1349 (1990) "acknowledged a facially valid regulation, similar to the one in this case, could be challenged as applied, if appropriate prerequisites were satisfied." Furthermore, the *Kirkpatrick* court states that previous actions alleging facial takings claims have no res judicata effect upon a subsequent action making out an "as applied" claim.

*Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 195 (1985). Interpreting *Williamson*, the Ninth Circuit has said that if state law was "unclear or underdeveloped" at the time of the alleged taking, plaintiff must first attempt to recover in state court. *Austin v. City and County of Honolulu*, 840 F.2d 678, 680 (9th Cir.), *cert. denied*, 488 U.S. 852 (1988). Plaintiffs here concede that they have yet to exhaust all state court remedies. Plaintiffs have filed an action in state court, including a claim for inverse condemnation. They have conceded that, although they believe pursuit of state court remedies for their takings claims will be futile, "it is possible that the issues in this case could be mooted or presented in a different posture by a state court determination of pertinent state law. . . . " Plaintiffs' Opposition to Motion to Dismiss, 3-4.

Since plaintiffs' "as applied" takings claim is not ripe for federal adjudication, this court lacks subject matter jurisdiction over the matter. Therefore, plaintiffs' claim is dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1).

B. Thirteenth Amendment Claim

Plaintiffs contend that as a result of the conditions imposed on them by the resolution, they are prevented from closing their mobile home park and forced to remain in the business of providing spaces for rent. This, they allege, violates their Thirteenth Amendment right to be free of involuntary servitude.

Yet, neither Carson's conversion ordinance nor the park closure resolution actually prevents plaintiffs from

going out of business, as closure of the park was in fact approved by the Carson City Council subject to payment of certain relocation benefits. Furthermore, the United States Supreme Court has upheld a California Supreme Court decision which ruled that an ordinance that actually requires a landlord to remain in the rental business or sell the property to another landlord does not constitute a violation of the Thirteenth Amendment. *Nash v. City of Santa Monica*, 470 U.S. 1046 (1985).[2] Hence, plaintiffs' Thirteenth Amendment claim is dismissed.

C. Due Process Claim

Plaintiffs allege that Section 10 of Resolution No. 91-014 violates their right to due process by requiring that the "applicant shall agree to all of the conditions by filing an Affidavit of Acceptance with the Community Development Department within thirty (30) days of the date of this Resolution." According to plaintiffs, if they accept all of the resolution's conditions within 30 days, they may not be able to later bring a substantive challenge to these conditions. Since plaintiffs do not challenge the content of the closure resolution's conditions but only the procedure by which plaintiffs are to accept the resolution conditions, plaintiffs' claim alleges a procedural violation rather than a substantive violation of due process.

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[2] The United States Supreme court dismissed the landlord's appeal for lack of a substantial federal question, an action which constitutes a decision on the merits and is binding on all lower federal courts and all state courts. *Hicks v. Miranda*, 422 U.S. 332, 344 (1975).

In its procedural context, the Due Process Clause is primarily concerned with the right to notice and a hearing "at a meaningful time and in a meaningful manner." *Mullane v. Central Hoover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). "Ordinarily, due process of law requires an opportunity for 'some kind of hearing' prior to the deprivation of a significant property interest." *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1 (1978).

Plaintiffs were afforded this opportunity in two public hearings held before the resolution was adopted. In reference to the first hearing, plaintiffs not that all "residents and other interested persons were notified prior to the hearing and were given copies of the documentation required pursuant to the City's ordinance." Complaint, ¶26. Thus any alleged deprivation of plaintiffs' property has occurred only after notice to plaintiffs and two public hearings in which plaintiffs were given the opportunity to defend their interests. Therefore, plaintiffs' procedural due process rights have not been violated, and this claim is dismissed.

D. Pendent State Law Claims

Plaintiffs have asserted a number of claims governed by state law. Since all of plaintiffs' federal claims are hereby dismissed, there is no basis for pendent jurisdiction over the state claims, and they are thus dismissed.

IT IS SO ORDERED.

DATED: 29 Jul 95

/s/ Laughlin E. Waters
LAUGHLIN E.
WATERS, SENIOR
UNITED STATES JUDGE

(2)

Supreme Court, U.S.
FILED
AUG 28 1995
CLERK

No. 95-241

In The

# Supreme Court of the United States

October Term, 1995

DARRYL WONG, WILLIE WONG
and DELPHINE WONG,

*Petitioners,*

v.

CITY COUNCIL OF THE CITY OF
CARSON, PLANNING COMMISSION
OF THE CITY OF CARSON,

*Respondents.*

**On Petition For A Writ Of Certiorari
To The Court Of Appeal,
Second Appellate District, Division One**

## BRIEF AMICUS CURIAE OF WESTERN MOBILEHOME PARKOWNERS ASSOCIATION IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

1. Is the City of Carson's Administrative Resolution No. 91-014, which conditions the City of Carson's issuance of a permit to terminate month-to-month tenancies and close the Avalon-Carson Mobile Home Park on the owners' payment of more than $1.4 million to park tenants for mobilehome coaches, moving expenses, dislocation fees, and stipends for low income seniors and disabled tenants, a regulatory or physical taking, or both, under the Fifth Amendment of the United States Constitution?

2. Does the City of Carson's Administrative Resolution No. 91-014, which functionally requires the parkowner to refund to tenants all of the profits the parkowner has made, violate substantive due process in that it unreasonably deprives parkowners of their "fair return" to which they are entitled under Carson's Rent Control Ordinance?

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## BRIEF AMICUS CURIAE OF WESTERN MOBILEHOME PARKOWNERS ASSOCIATION IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF CERTIORARI

## IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, Western Mobilehome Parkowners Association (WMA) respectfully submits this brief amicus curiae in support of petitioners Darryl Wong, Willie Wong and Delphine Wong (Wongs). Written consent to the filing of this brief has been granted by counsel for all parties. Copies of the letters of consent have been lodged with the Clerk of the Court.

WMA is a duly constituted nonprofit, statewide organization that was founded in 1945 to represent the interests of mobilehome park owners, operators, and residents in California. WMA has approximately 1,800 members who provide the public with approximately 180,000 mobilehome rental spaces. WMA advocates and defends the interests of its members in matters regarding the extent and propriety of state and local regulation of mobilehome parks. In defense of its members' interests WMA appeared as amicus curiae in ***Yee v. City of Escondido***, 503 U.S. 519, 118 L. Ed. 2d 153 (1992).

This amicus will argue first that the Wongs have a right to go out of business, a "liberty" interest protected by the Fourteenth Amendment. Second, this amicus will argue that the onerous conditions of Resolution No. 91-014 adopted by the City of Carson (City) has deprived the Wongs of their protected right to go out of business. The City has failed to show a compelling need or any need whatsoever to infringe on this liberty interest. Last, this amicus will argue that the Just Compensation Clause of the Fifth Amendment mandates that when private property is "taken" by excessive regulation, the property owner must be compensated. If, as in this case, a property owner is denied the ability to go out of business because of onerous conditions placed on his or her application so as to bestow a benefit on the public as a whole, justice and fairness require that the public as a whole

bear a reasonable share of the costs associated with that benefit.

WMA's public policy perspective in support of private property rights of park owners will help provide this Court with a more complete perspective of the interests at stake which militates for granting the Petition for Writ of Certiorari.

## OPINION BELOW

The opinion of the Court of Appeal for the Second Appellate District, State of California, is not published. A copy of the opinion is reproduced in the Petition for Writ of Certiorari, Appendix 1.

## STATEMENT OF THE CASE

In June, 1979, the Wongs bought the Avalon-Carson Mobile Home Park in the City of Carson, California. The park consists of 172 mobilehome and recreational vehicle spaces, most of which are leased to mobilehome owners for a monthly rental fee. Administrative Record (AR) 106, 6535. The purchase price of the park was $1.7 million. The Wongs put $500,000 down and obtained a $1.2 million loan. AR 7, 161. The park is located in the center of the City on land zoned for commercial-regional center, commercial general, and residential multiple dwelling use. AR 106, 6536.

Approximately one month after the Wongs purchased the park, a rent control ordinance went into effect setting the maximum rent which could be charged for any particular space at the level of rent charged for the space on May 1, 1979. After the Wongs concluded that they could no longer afford to continue operating the mobilehome park under the City's restrictive rent control regulations, they applied to the City for permission to close the park. AR 52. At the time the Wongs had no plans for an alternative use of their land other than "vacant use." AR 46, 96, 112. They desired simply to go out of the mobilehome park business.

Mobilehome parks in California are a heavily regulated industry. Park owners seeking to convert their property to another use must comply with California Government Code §§ 65863.7 and 65863.8 and other provisions. California Government Code § 65863.7 required the Wongs to file a relocation impact report (RIR) setting forth "the impact of ... closure, or cessation of use [of the land as a mobilehome park] upon the displaced residents." This sections provides authority for local government, as a condition of its permission to close a mobilehome park, to require the park owner to "take steps to mitigate any adverse impact of the ... closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park." Cal. Gov't Code § 65863.7(e).

The City agreed to the Wongs' proposed closure only upon the condition that they comply with "mitigation" measures set forth in Resolution No. 91-014. Petition for Writ of Certiorari, Appendix 23. The City directed the Wongs to pay the residents of their mobilehome park over $1.4 million in cash payments as the price for permission to close the park and go out of business. The City's price for allowing the Wongs to go out of business exceeds all of the profit the Wongs have earned on space rentals during their entire 16 year ownership of the park. Petition for Writ of

Certiorari at 20. By requiring mitigation payments of over $1.4 million, the City has put the Wongs in the classic catch-22 situation. They cannot afford to stop operating the park and they cannot afford to continue to do so.

Nothing else is involved in this case. The Wongs have not requested approval for any other use of the property nor have they asked the City for any other form of discretionary approval. The Wongs are no transient profiteers seeking to turn a fast buck at the expense of the City and the park residents. They invested a substantial amount of their personal resources in a business operation which the City apparently concedes is of significant value to the City. They have struggled for 16 years under the City's strict rent controls to try to make the operation of the mobilehome park a reasonable economic venture. Only after many years of effort did they conclude that continuing the struggle made no sense. They made the difficult decision to close the park and walk away from the significant investment that the mobilehome park represents only to be forced to remain a landlord or to pay what amounts to a ransom to recover their constitutional right to go out of business.

## SUMMARY OF ARGUMENT

In requiring mitigation payments to tenants exceeding $1,471,654.00, the City of Carson requires the Wongs to refund over 29 years of the present net operating income to the tenants as a condition of the City's permission to go out of business. This condition is an unconditional infringement of the Wongs' liberty rights because it has effectively prevented them from going out of the mobilehome park business. Any justification advanced by the city for a condition which places such an onerous burden on this

fundamental personal freedom must be compelling and utilize the least restrictive means. The condition is apparently designed to protect the tenants' investments in their mobilehomes and to require the park owner to contribute money towards tenants' relocation before closing the park. The purpose of this condition is simply to transfer wealth from the landlord and place it in the hands of the tenants. The result of this condition is to place an onerous burden on the right of the Wongs to go out of business. This condition deprives the Wongs of their property without due process of law because the mitigation conditions do not serve a valid purpose. The purpose is to protect the tenants' investment in their mobilehomes at the expense of the Wongs' right to terminate the monthly tenancies and possess, use and dispose of their property.

The City of Carson's aim in adopting Resolution No. 91-014 may be to create affordable housing for senior, disabled and low income families. However, the City cannot force the Wongs to shoulder this societal burden by effectively and economically denying them the right to go out of business. The Wongs are not responsible for the scarcity of mobilehome rental spaces, or the general lack of low cost housing, or the low income status of mobilehome park residents. Forcing the Wongs alone to bear the full cost of what amounts to a social welfare program is forcing the Wongs "alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." ***Armstrong v. United States***, 364 U.S. 40, 49 (1960).

## ARGUMENT

### I

### RESOLUTION NO. 91-014 DEPRIVES THE WONGS OF THE RIGHT TO GO OUT OF BUSINESS, A "LIBERTY" INTEREST PROTECTED BY THE FOURTEENTH AMENDMENT

The record clearly shows that the Wongs sought to remove themselves from the occupation of providing mobilehome rental space and on that basis sought permission from the City to close the park and go out of business. The California Court of Appeal in one sentence flatly denied the existence of a constitutional right to go out of business. Petition for Writ of Certiorari, Appendix 4. This bald statement shows the lack of understanding of this infrequently addressed liberty interest. Thus, this case presents the Court with the opportunity to define the scope of this constitutional liberty when an individual attempts to withdraw from a regulated occupation.

The right to go out of business is closely related to the right of the individual "to engage in any of the common occupations of life" which is protected by the liberty guaranteed under the Fourteenth Amendment to the United States Constitution. ***Meyer v. Nebraska***, 262 U.S. 390, 399 (1923). In fact, the right to go out of business is a logical concomitant of the right to choose a new occupation. It is inherently logical that the government may not force an individual to engage in a particular calling. Regulation, by definition, does not include any notion of forcing the one regulated to participate in a particular enterprise. ***Yee v. City of Escondido***, 118 L.Ed. 2d at 165.

Fundamental rights not explicitly delineated in the Constitution of the United States can only be determined and defined by examining the importance of the activity in light of relevant social and legal history underlying the right at issue. ***Einsenstadt v. Baird***, 405 U.S. 438, 453 (1972). The right to go out of business is a personal freedom protected within the "liberty" of the Fourteenth Amendment.

Liberty guarantees in the federal constitution have their roots in Section 39 of the Magna Carta: That no person ought to be taken, imprisoned or disseised of his freehold, or to be outlawed or exiled or in any way harmed save by the lawful judgment of his peers or by the law of the land.

The debates in Congress on the first ten amendments included discussion of a clause protecting "the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety." James Madison, House of Representatives debates on Federal Bills of Rights, Monday, June 8, 1789.

Following the ratification of the Fourteenth Amendment in 1868, the United States Supreme Court repudiated the notion of a due process liberty that only guaranteed freedom from physical restraint. In ***Allgeyer v. Louisiana***, 165 U.S. 578 (1897), the Court held that "[t]he 'liberty' mentioned in that [Fourteenth] amendment ... is deemed to embrace the right of the citizen ... to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation ...." ***Id.*** at 589. Over the next half century the Court began the "gradual process of judicial inclusion and exclusion" (***Davidson v. New Orleans***, 96 U.S. 97, 104 (1877)), with every decision falling within the former category. ***See, e.g., Butler v. Perry***, 240 U.S. 328, 333 (1916). ***Meyer v. Nebraska***, 262 U.S. 390, represented both an expansion of liberty rights and a summary of their development:

> "[Liberty denotes] ... the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." ***Id.*** at 399 (citations omitted).

Over the years the liberty of the due process clause has become a general right of private autonomy or, more specifically, a right to be let alone. The courts have focused upon the adequacy of the state's justification for interference with a recognized liberty interest, and not upon the question of whether the interest exists in a particular case. In any event, it is now undeniable that "[i]n a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed." ***Board of Regents of State Colleges v. Roth***, 408 U.S. 564, 572 (1972).

The right to go out of business or, more precisely, the right not to be compelled by the state to remain in a particular business, is very similar to the right to work in any of the common occupations of the community. In ***Munn v. Illinois***, 94 U.S. 113, 142 (1876), Justice Field stated that liberty

> "means freedom to go where one may choose, and to act in such a manner, not inconsistent with the equal rights of others, as his judgment may dictate for the promotion of his happiness; that is, to pursue such callings and avocations as may be most suitable to develop his capacities, and give to them their highest enjoyment." ***Id.*** at 142 (Field, J. dissenting).

This is perhaps the earliest formulation by a member of this Court of the due process right to work in the field

one chooses. In the instant case, the Wongs made the decision to go out of business. The City of Carson decided to make it clear that the Wongs could not afford to go out of business by requiring mitigation payments of over $1.4 million. The City's price for going out of business greatly exceeds all of the profit the Wongs have earned on space rentals during their entire ownership of the park. Resolution No. 91-014 requires the Wongs to refund over 29 years of the present net operating income to the tenants. Petition for Writ of Certiorari at 25. Those conditions effectively prevent the Wongs from choosing ***not*** to be park owners any longer in violation of the Due Process Clause of the Fourteenth Amendment.

The notion of forcing an individual into a particular role in a regulatory scheme because doing so would benefit the public is completely alien to American jurisprudence. Courts have always allowed states to impose strict rules on those who wish to "play the game." It is, however, unprecedented to force someone to participate. As stated by this Court in ***Textile Workers v. Darlington Manufacturing Company***, 380 U.S. 263 (1965):

> "A proposition that a single businessman cannot choose to go out of business if he wants to would represent such a startling innovation that it should not be entertained without the clearest manifestation of legislative intent or unequivocal judicial precedent." ***Id.*** at 270.

In ***Robinson v. Diamond Housing Corporation***, 463 F.2d 853 (D.C. Cir. 1972), the court stated:

> "None of this is to say that the landlord may not go out of business entirely if he wishes to do so or that the jury is authorized to inspect his motives if he chooses to commit economic

> hara-kiri. There would be severe constitutional problems with a rule of law which required an entrepreneur to remain in business against his will." ***Id.*** at 867.

This statement is a clear indication that the federal courts would view a rule of law which allowed individuals to be forced to remain in a particular business to be constitutionally defective. Yet, the California Court of Appeal in the instant case flatly denied the existence of a constitutional right to go out of business. Petition for Writ of Certiorari, Appendix 4. The court cites to ***Nash v. City of Santa Monica***, 37 Cal. 3d 97 (1984). In ***Nash***, the California Supreme Court held that any constitutionally protected interest the property owner had to go out of business was outweighed by the state's interest in protecting the supply of affordable housing. 37 Cal. 3d at 99. But even the court in ***Nash*** recognized that a high degree of constitutional protection should be afforded one's choice of whether to remain in a particular business. 37 Cal. 3d at 100, 103-04.

The Wongs have made the decision to go out of business rather than continue to try to operate a mobilehome park subject to the rent board's regulations. If the government could, under the police power, choose which enterprise a person will participate in, that government would denigrate the broad constitutional liberty guarantees that we enjoy as citizens of the United States.

## II

## THE CITY OF CARSON HAS FAILED TO DEMONSTRATE A PROPER PURPOSE TO IMPOSE EXCESSIVE CONDITIONS ON THE WONGS' RIGHT TO GO OUT OF BUSINESS

The Fourteenth Amendment to the United States Constitution prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. Amend. 14, § 1. "[T]he Due Process Clause [of the Fourteenth Amendment] contains a substantive component that bars "arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'" ***Zinermon v. Burch***, 494 U.S. 113, 125 (1990) (citation omitted); ***Daniels v. Williams***, 474 U.S. 327, 331 (1986). This substantive component "reach[es] abuses of [city government] that are forbidden by the State's statutes." ***Zinermon v. Burch***, 494 U.S. at 124.

As discussed in Part I above, the City of Carson has infringed on the Wongs' fundamental right to go out of business. Whenever a state infringes upon a fundamental liberty interest, the reviewing court must apply the strict scrutiny standard of review. ***Shapiro v. Thompson***, 394 U.S. 618, 634 (1969). The state has the burden of showing a compelling interest supporting the legislation (***Roe v. Wade***, 410 U.S. 113, 155 (1973)), and further must demonstrate that the least restrictive means available were used to accomplish its purpose. ***Cleveland Board of Education v. LaFleur***, 414 U.S. 632, 644 (1974). Here, the City of Carson by adopting Resolution No. 91-014 has imposed excessive conditions on the Wongs' exercise of their fundamental right to go out of business. This is constitutionally impermissible absent a compelling interest, which, as discussed below, does not exist. Yet even under

the "rational relationship" test normally used in examining the validity of property regulations, Resolution No. 91-014 fails.

### A. The Due Process Clause Protects Against Arbitrary and Capricious Governmental Action

This Court has long held that even the police power has its limits. The classic statement of the parameters of the police power was made by this Court in ***Lawton v. Steele***, 152 U.S. 133,137 (1894):

> "To justify the state in thus interposing its authority in behalf of the public, it must appear--First, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals."

This statement has been reaffirmed many times by the Court. ***See Goldblatt v. Town of Hempstead***, 369 U.S. 590, 594-95 (1962). The government has no power, under the guise of police regulation, arbitrarily to invade the personal rights and personal liberty of the individual citizen. The police power, however broad and extensive, is not above the Constitution.

While the Court is not cast in the role of a superlegislature, there remains a need for review of both the purpose and the means chosen. "[O]ur cases have not departed from the requirement that the government's chosen means must rationally further some legitimate state purpose." ***Moore v. East Cleveland***, 431 U.S. 494, 498 n.6 (1977). Moreover, the vitality of the substantive due process clause exists in an economic context. In ***Lynch v. Household Finance Corporation***, 405 U.S. 538, 551 (1972), this Court stated:

> "Such difficulties indicate that the dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized."

In the instant case, the public purpose as well as the means to achieve the public purpose must be questioned.

**B. Resolution No. 91-014 Is Irrational and Unfairly Requires the Wongs to Bear a General Public Burden**

The City of Carson's Resolution No. 91-014 is irrational and does not serve a legitimate governmental purpose. The stated purpose of Resolution No. 91-014 is set forth in Section 4D thereof.

> "The purposes of the Rent Control and RIR Ordinance are to protect the mobilehome owners who rent spaces in mobilehome parks from excessive rents and to protect their considerable investment in their mobilehomes, which includes the cost of improvements and maintenance (as well as financing) and to protect their ability to afford replacement housing, upon the closure of a park. The ordinances are also intended to permit park owners a fair profit and to allow them to change the use of the property without incurring unreasonable burdens." Petition for Writ of Certiorari, Appendix 32.

Simply stated, the purpose of Resolution No. 91-014 is to transfer wealth from the mobilehome park owner to the park tenant and to protect the tenant's ability to afford replacement housing. It cannot be seriously argued that the transfer of wealth from the mobilehome park owner to a special interest class constitutes a valid public purpose. If the City of Carson wants to subsidize a special interest class, it should pay for the subsidy out of the City's general fund, not from the pockets of the mobilehome park owner.

Moreover, even if the City should argue that the public purpose of Resolution No. 91-014 is to create affordable housing for seniors, disabled and low income families, which is a laudable aim, the means employed by the City to achieve this purpose must be questioned.

The desire of the City of Carson to provide affordable housing to its residents does not justify placing such onerous conditions on the Wongs that they are effectively and economically prevented from going out of business. The problem of lack of affordable housing is a societal problem. The City's conditions unfairly single out the Wongs to shoulder the burden of the general unavailability of affordable housing. Resolution No. 91-014 unduly burdens the Wongs' right to terminate the monthly tenancies and possess, use and dispose of their property.

In ***Guimont v. Clarke***, 121 Wash. 2d 586 (1993), the Washington Supreme Court held unconstitutional a requirement that owners of mobilehome parks provide relocation assistance to tenants if the owner closes the park.[1]

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[1] The Washington relocation assistance statute at issue in ***Guimont v. Clarke*** required the owners of mobilehome parks to pay each tenant between $4,500 and $7,500 (depending on the amount of notice, nature of the mobilehome, (continued)

The state court ruled that the statute violated the owners' substantive due process rights under the Fourteenth Amendment. After finding that the state has a legitimate interest in addressing the relocation expenses incurred in mobilehome park closings, it examined the fairness of imposing the burden on the owner. The court noted:

> "Mobile home parks provide a source of low-cost housing for the elderly and those with low incomes. These people often cannot afford relocation costs. Yet by requiring the closing park owner to pay these costs, which can amount to extremely high sums of money, the State is placing the burden of solving housing problems on the shoulders of a few. ... While the closing of a mobile home park is the immediate cause of the need for relocation assistance, it is the general unavailability of low income housing and the low income status of many of the mobile home owners that is the more fundamental reason why the relocation assistance is necessary. An individual park owner who desires to close a park is not significantly more responsible for these general society-wide problems than is the rest of the population. Requiring society as a whole to shoulder the costs of relocation assistance represents a far less oppressive solution to the problem." *Id.* at 610-11.

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and other factors) as relocation assistance if the park owner wanted to close the park or convert it to another use. Two-thirds of the payment could come from a state fund to be accumulated from a tax on mobilehome transfers, but the park owner could be liable for the full amount if the fund contained insufficient funds. 121 Wash. 2d at 591-92.

In the case at bar, the Wongs have been providing affordable housing to the City's residents. Using their land as a mobilehome park has not caused a lack of affordable housing in Carson or caused the low income status of its tenants. Lack of affordable housing and the inability of low income tenants to afford relocation costs are public conditions which should be borne by society as a whole. Instead, the City has singled out the Wongs to bear the full costs of what amounts to a social welfare program. The City has placed on the Wongs a staggering $1.4 million price tag for going out of business. Resolution No. 91-014 is unduly burdensome on the Wongs' right to enjoy, use, and dispose of their property. As this Court stated in ***Lucas v. South Carolina Coastal Commission***, "If ... the uses of private property were subject to unbridled, uncompensated qualification under the police power, 'the natural tendency of human nature [would be] to extend the qualification more and more until at last private property disappear[ed]." 505 U.S. 966, 120 L. Ed. 2d 798, 812 (1992) (citations omitted).

## III

## RESOLUTION NO. 91-014 CONSTITUTES AN UNLAWFUL TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION

The Takings Clause of the Fifth Amendment to the United States Constitution provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V. This federal prohibition was extended to the states through the Fourteenth Amendment. ***Chicago, Burlington & Quincy Railroad Co. v. City of Chicago***, 166 U.S. 226 (1897). Since this Court's decision in ***Pennsylvania Coal Co. v. Mahon***, 260 U.S. 393 (1922), land use regulations can violate the

Takings Clause if the use of property is so severely restricted as to effectively usurp private ownership rights.

This Court has repeatedly stated that land use regulations will effect a taking of property if they fail to "substantially advance legitimate state interests, or [if they] den[y] an owner economically viable use" of property. ***Agins v. City of Tiburon***, 447 U.S. 255, 260 (1980) (citations omitted). The two elements of the test are stated in the disjunctive; either is sufficient to establish a regulatory taking without further analysis In 1987, this Court in ***Nollan v. California Coastal Commission***, 483 U.S. 825 (1987), reaffirmed this two-part test. The ***Nollan*** decision clearly illustrated that when a property regulation fails to substantially advance a legitimate government interest, a taking occurs regardless of the economic impact on the property owner.

The first prong of the two-part test was clarified in ***Dolan v. City of Tigard***, 512 U.S. ____, 129 L. Ed. 2d 304 (1994). In ***Dolan***, the Court defined what level of scrutiny should be employed when applying the first prong of the ***Nollan*** test. Specifically, the Court made it clear that the level of scrutiny was above the "minimal" level.

> "We think the 'reasonable relationship' test adopted by the majority of the state courts is closer to the federal constitutional norm than either of those previously discussed. But we do not adopt it as such, partly because the term 'reasonable relationship' seems confusingly similar to the term 'rational basis' which describes the minimal level of scrutiny under the Equal Protection Clause of the Fourteenth Amendment. We think a term such as 'rough proportionality' best encapsulates what we hold to be the requirement of the Fifth Amendment." ***Dolan***, 129 L. Ed. 2d at 320.

Next, ***Dolan*** held that the burden of proof as to whether a "legitimate government interest" is advanced lies with the government entity (***i.e.***, the City) advancing such an interest. 129 L. Ed 2d at 320. In the instant case, Resolution No. 91-014 fails to "substantially advance a legitimate state interest" under the "rough proportionality" test.

In ***Aspen-Tarpon Springs L.P. v. Stuart***, 635 So. 2d 61 (Fla. App. 1 Dist. 1994), the First District Court of Appeal of Florida struck down an ordinance similar to the City of Carson's Resolution No. 91-014 declaring "that the statute goes far beyond the legitimate goal of reasonably accommodating conflicting interests, in effect coercing mobilehome park owners to surrender indefinitely their rights to possess and occupy their land and to exclude others." 635 So. 2d at 67-68.

In finding unconstitutional the requirement for park owners to pay for relocation expenses for park residents and purchase their coaches as a condition of changing the park's use, the court stated: "A statute that requires any form of remuneration to recover the right to possess and occupy one's own property would seem to be confiscatory." 635 So. 2d at 68. This type of regulatory scheme "singles out mobilehome park owners to bear an unfair burden, and therefore constitutes an unconstitutional regulatory taking of their property." ***Id.***

In the case at bar, the City is requiring the Wongs to pay more than $1.4 million as a condition of closing their mobilehome park. The City's price for going out of business exceeds all of the profit the Wongs have earned on space rentals during their entire ownership of the park. Petition for Writ of Certiorari at 20. The City's ostensible purpose in imposing these conditions is "to protect the mobilehomes, which includes the cost of improvements and

maintenance (as well as financing), and to protect mobilehome owners' ability to afford replacement housing, upon closure of a park." Petition for Writ of Certiorari, Appendix 32. Clearly, the purpose of Resolution No. 91-014 is simply to transfer wealth from the park owner to the park tenant. This shifting of wealth does not comply with the "substantial advancement" test as that standard has been set forth in ***Nollan*** and ***Dolan***.

Moreover, the Just Compensation Clause of the Fifth Amendment mandates that when private property is "taken" the property owner is to be compensated. This self-executing constitutional provision must not be circumvented for expedient "policy considerations." As stated in ***Armstrong v. United States***, 364 U.S. at 49, a regulation goes too far when it "forc[es] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."

In the instant case, Resolution No. 91-014 is intended to benefit the park's tenants by protecting their investments in their mobilehomes and to protect their ability to afford replacement housing. Petition for Writ of Certiorari, Appendix 32. No one would dispute that protecting affordable housing is a worthy objective; however, it does not establish that the Wongs and other park owners may be compelled to bear the full costs of such a "comprehensive program." ***Nollan***, 483 U.S. at 841.

The issue is not whether a subsidy to mobilehome coach owners is a worthy goal, but rather who should pay. "[T]he question at bottom is upon whom the loss ... should fall." ***Pennsylvania Coal Co. v. Mahon***, 260 U.S. at 415. Here, if the City of Carson wants to subsidize mobilehome

owners, justice and fairness require that the public as a whole bear the costs associated with that benefit.

## CONCLUSION

For the foregoing reasons, amicus curiae Western Mobilehome Parkowners Association respectfully urges that this Court grant the Petition for Writ of Certiorari.

DATED: August 25, 1995.

Respectfully submitted,

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No. 95-241

In The

# Supreme Court of the United States

October Term, 1995

DARRYL WONG, WILLIE WONG and DELPHINE WONG,

*Petitioners,*

vs.

CITY COUNCIL OF THE CITY OF CARSON and PLANNING COMMISSION OF THE CITY OF CARSON,

*Respondents.*

**On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of California**

## RESPONDENTS' BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Does Petitioners' failure to utilize the procedure provided in the Carson Municipal Code for seeking modification of the conditions on the change of use of their mobilehome park render their challenge to those conditions unripe?

2. Do the conditions result in a physical taking when petitioners invited the homeowners to rent spaces in their park and petitioners can make a very considerable profit from the change of use after satisfying the conditions or can continue to use their property as a mobilehome park and earn a fair return on their investment in the park?

3. Do the conditions result in a regulatory taking or violate substantive due process when the conditions substantially advance the purpose of California Government Code Section 65863.7, which petitioners do not challenge, and petitioners have viable economic use of their property?

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No. 95-241

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DARRYL WONG, WILLIE WONG and DELPHINE WONG,

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vs.

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*Respondents.*

**On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of California**

## RESPONDENTS' BRIEF IN OPPOSITION

Respondents, the City Council and Planning Commission of the City of Carson (the "City"), respectfully request that this Court deny the petition for writ of certiorari seeking review of an unpublished opinion (App. 1) of the California Court of Appeal, Second Appellate District. The California Supreme Court initially granted review. However, after the matter was fully briefed in that Court, review was dismissed as improvidently granted pursuant to Rule 29.4(c) of the California Rules of Court.

## STATEMENT OF THE CASE

Petitioners (the "Wongs") own and operate a mobilehome park in the City. They want to change the use of the park so they can develop the property as a shopping center or sell it for the commercial purposes permitted by the City's zoning for the property. (App. 2, 24, 74, AR II 5186)[1] This use change requires eviction of the homeowners who rent spaces for their homes in the park. The City approved it subject to conditions requiring the Wongs to assist the homeowners in paying for the costs of relocating pursuant to California Government Code Section 65863.7.

That Section requires local jurisdictions to hold a hearing to consider the impacts of the use change on the ability of displaced homeowners to relocate their homes or obtain alternate housing and authorizes local jurisdictions to condition such use changes on the provision of reasonable relocation assistance. (Resp. App.1) The Wongs did not challenge the validity of Section 65863.7 below.

The City's relocation impact report ("RIR") ordinance, Carson Municipal Code Section 9128.21

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[1] "AR" refers to the certified Administrative Record of the City's proceedings concerning petitioners' change of use application. It consists of Part I (volumes I-III) and Part II (volumes I-XVII) and contains all the evidence presented to the City and considered by the trial court except for a few judicially noticed matters, such as the pleadings and opinion in a prior federal action between the parties which are contained in the Clerk's Transcript on Appeal ("CT").

(Resp.App. 4), establishes a hearing procedure for considering the impact report required by Section 65863.7 and determining what, if any, relocation assistance would be reasonable given the facts of a particular application. The Wongs do not challenge the facial validity of the RIR ordinance. In any event, such a challenge would be barred by the unpublished opinion in the prior federal action between the parties, Wong v. City of Carson, 91-CV-2721-LEW, which upheld the facial validity of the ordinance. (App. 74 *et seq.*)

The purpose of Section 65863.7 and the RIR ordinance is to mitigate the adverse impacts of a use change on the ability of displaced homeowners to obtain alternate housing. Because the Wongs did not challenge the validity of Section 65863.7, and cannot challenge the validity of the RIR ordinance, they cannot claim in this case that requiring them to provide reasonable relocation assistance is unconstitutional. Thus, the claim in their petition that park owners should not have to bear any of the burden of assisting homeowners to pay for relocation cannot be considered in this case.

Further, their claim that the conditions are so onerous as to preclude them from changing the use of their park is contrary to the factual finding in the decision in the prior federal case between the parties (App. 80-81) and contrary to the factual findings of the courts below in this case (App. 4-5, 17). It is also contrary to the record. Their further claims that compliance with the conditions will cost them $1.4 million and that this is more than their property is worth are also contrary to the record. The Wongs are asking this Court to reverse the factual findings made by the courts below.

Moreover, the Wongs failed to use the City's procedure for seeking modification of the conditions and have never obtained a final decision from the City concerning the application of the RIR ordinance to their property. Thus, their challenge to the conditions is not ripe.

## A. FACTUAL BACKGROUND

A mobilehome park is a residential community which exists as a result of investments made both by the park owner and by the owners of the mobilehomes who rent spaces for their homes in the park. In most mobilehome parks, the aggregate investment of the homeowners in the park far exceeds the investment of the park owner. See *Casella v. City of Morgan Hill*, 230 Cal.App.3d 43, 53, 280 Cal.Rptr. 86 (1991); *Oceanside Mobilehome Park Owners v. City of Oceanside*, 157 Cal.App.3d 887, 911 & fn.9, 204 Cal.Rptr. 239 (1984); Baar, *The Right to Sell the "Im" Mobile Manufactured Home in its Rent Controlled Space in the "Im" Mobile Home Park: Valid Regulation Or Unconstitutional Taking*, 24 URBAN LAWYER, 157, 159, fn.2, Winter 1992.

In this case, the Wongs purchased their park for $1.7 million (pet.4) and the homeowners invested at least $2.7 million in their homes. ($40,000 to $70,000 per home for 69 homes, AR II 6549-52, 5027, *et seq.*, 5955, 5966-68, 6095, 6599) When the Wongs invited homeowners to rent spaces in their park they invited them to purchase a mobilehome in their park; the Wongs could not have rented spaces in their park without the investment of homeowners.

Once installed in a mobilehome park, the homes are not mobile in any practical sense because of the high cost of moving them. *Yee v. City of Escondido*, 503 U.S. 519, 118 L.Ed.2d 153, 162, 112 S.Ct. 1522 (1992); California Civil Code Section 798.55 (Resp. App. 10). There is also a shortage of vacant spaces that will accept a home being relocated (AR II 630; CT 353-374) and a home without a site has only scrap value ($1000 -$2000; AR II 5957; 24 URBAN LAWYER at 157). In recognition of the vulnerability of mobilehome owners, created by the large investment in their homes and the difficulty of moving them, California law gives homeowners the right to sell their homes in place in a park (Civil Code Sections 798.70 and 798.74, Resp. App. 11-13) and protects them from eviction (Civil Code Section 798.56). *Yee*, 118 L.Ed.2d at 163. These protections are part of the Mobilehome Residency Law, Civil Code Section 798, *et seq.*, and together give homeowners a statutory leasehold in a park.[2]

However, Civil Code Section 798.56(g) allows eviction of homeowners to accommodate a change in the use of park property. (Resp. App. 10) Because it may cost as much as $10,000-$15,000 to move a home (Baar, 24 URBAN LAWYER at 158-159) and the investment in a home will be wiped out unless the home is moved to another park, Government Code Section 65863.7 authorizes local jurisdictions to condition changes in park use on reasonable relocation assistance to the displaced homeowners. The Administrative Record is replete with evidence of the homeowners' financial inability to relocate their homes or obtain alternate housing without assistance. (AR II 4039,

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[2] All statutory references are to California Codes.

4863-65, 4852-4854, 4870, 3989-90, 6083)[3] Yet it was the investment of these homeowners which made it possible for the Wongs to earn a profit from their mobilehome park.

The Wongs valued their property at $7 million in the impact report they filed with the City. (AR II 42) At no time during the proceedings before the City did they ever assert that the relocation assistance proposed by the City would make the use change financially infeasible. Rather, they claimed they should not have to pay any homeowner more than $4,000 even if the cost of moving a home was greater than that amount (AR II 678) and even when a relocation space cannot be found for a home. They also argued they should not be required to purchase the homes in the park. (AR II 4444).

The City did not require the Wongs to purchase any of the homes in the park, but it did require that some homeowners receive assistance greater than $4,000. The conditions of approval require that the Wongs pay each homeowner the cost of tearing down, moving and setting up their home at another mobilehome park ($500 to $7700) and the cost of moving their furnishings and other personal belongings ($700), as established by moving estimates for each individual home and cost estimates by furniture movers. (App. 34, 44-47) The Wongs did not

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[3] 26% of the households in the census tract in which the Wongs' park is located have incomes designated by the Department of Housing and Urban Development as very low and 41% fall within the designation for low income households. U.S Census Bureau, Summary Tape File 3A, 1990 Census and HUD Income Limit Tables.

challenge these conditions in the court proceedings below.

Because it was not known whether all the homes could be relocated to a space in another park, the conditions also contain a provision called the "last resort" benefit.[4] This benefit applies *only if* a relocation space cannot be found within 50 miles from the Wongs' park during the six month period allowed for the removal of the homes from the park under Civil Code Section 798.56(g)(2). (App. 53, Resp.App. 10) It is only this condition which the Wongs challenged below.

Of the 171 households in the park at the time of the City's hearings, only 69 were eligible for the last resort benefit *if* a relocation space could not be found.[5] This benefit consists of a lump sum payment to assist any such homeowners, who would otherwise lose the entire investment in their homes, in paying for the costs of relocating. The payment is based on consideration of the cost of moving the personal belongings of each individual household, the depreciated replacement cost of each home ($7,000-$35,000, App. 57-58), and move-in costs at a new location, such as first and last months' rent, security

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[4] A study by the City shows there were a substantial number of available spaces, but that availability varies from month to month. (CT 357-374)

[5] Some of the "homes" in the park are "recreational vehicles" rather than "mobilehomes." Only homes which are "mobilehomes," as defined by Civil Code Section 798.3, and are the principal residence of the owner, are eligible for this benefit. Some mobilehome owners were not entitled to any benefits whatsoever because they did not reside in their home. (App. 37-41)

deposits and higher rents ($1,950, App. 55-59). This benefit is far less than the purchase price ($40,000 to $70,000, AR II 5010, 6549-52, 5727, *et seq.*, 5955, 5966, 6995, 6599) of the homes.

The actual costs of relocation for the homeowners whose homes cannot be relocated will be far greater than the last resort benefit. Those homeowners who have paid off the loans made to purchase their homes will have to incur debt to purchase a mobilehome in another park and pay higher rent at that park. If the park were not closing those homeowners could have recouped their investment through sale of their homes and could also have borrowed against the equity in their homes. The many homeowners who still have outstanding debt for the purchase of their homes will also be faced with defaults on their loans.[6]

The Wongs base their claim that it will cost $1.4 million to comply with the conditions of approval on the incorrect assumption that they will have to pay the last resort benefit to all of the 69 originally eligible homeowners. However, it will be possible to relocate many of the homes and several of these homeowners left the park without relocation assistance.[7] Because the number of available relocation spaces varies, it is not possible to

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[6] 52% of the homeowners have outstanding debt on their homes. (AR II 4039) The possibility of a deficiency judgment against the homeowners depends on the terms of a loan and the date at which it was executed. Civil Code Section 2938.8.

[7] There were only 57 eligible homes at the time of briefing in the Court of Appeal. There are now far fewer homes remaining in the park.

know how many homeowners might ultimately be entitled to the last resort benefit. The only certainty is that the cost will be much less than the $1.4 million claimed by the Wongs.

Even if it would cost the Wongs $1.4 million, they would still profit by $3.9 million just by selling the park once the homes are removed. ($7 million value claimed in the Wongs' impact report less their $1.9 million purchase price less $1.4 million in relocation payments.) At no time during the City's hearings did the Wongs ever claim that the property was worth less than $7 million.

During the trial court proceedings they attempted, unsuccessfully, to supplement the evidence in the Administrative Record with a declaration stating it was worth $5 million rather than $7 million. (CT 259, App. 16) Even if there were admissible evidence of the $5 million value, the Wongs would still profit by $1.9 million from the change of use even if they had to pay $1.4 million to relocate the homeowners.

There is no evidence in the Administrative Record, and none was offered in the courts below to support the Wongs' claim, made for the first time in this Court, that the conditions would cost more than their property is worth. In support of this claim, the Wongs offer figures and estimates (pet. fn. 6) purporting to show that their property is worth only $812,000 to $1.2 million. This value estimate is derived by capitalizing the park's alleged rental income, but there is no evidence of the park's income in the record. Further, this newly alleged value is based on use of the property as a mobilehome

park when the Wongs plan to develop it or sell it for the commercial uses permitted by the zoning on the property.

Although the Wongs claim that continued use of their property as a mobilehome park is not viable because of the City's mobilehome park rent control ordinance, they do not claim they have been deprived of a fair return on their investment by application of the ordinance. The Wongs purchased the park after rent control was in place and a rent increase has been granted to them every time they applied for one. They have never challenged the adequacy of any of those rent increases and they have not sought any rent increase since 1986. (AR I 3)[8] Thus, any claim that application of the ordinance has made continued operation of the park financially unviable would not be ripe or valid. *Yee, supra,* 153 L.Ed.2d at 166.

## B. THE ADMINISTRATIVE PROCEEDINGS BELOW AND THE OPINIONS IN PRIOR RELATED ACTIONS BETWEEN THE PARTIES

The Wongs filed an incomplete application to change the use of their park in 1988. (AR I tab 1) The City informed the Wongs that their application could not be

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[8] The rents have been controlled since May of 1979 and the Wongs purchased in June of 1979. (AR I 3) The provisions of the Ordinance are set forth in *Carson Mobilehome Park Owners' Assn. v. City of Carson,* 35 Cal.3d 184, 197 Cal.Rptr. 184, 672 P.2d 1297 (1983), which upheld the validity of the ordinance. All increases must be approved by the City's rental review board (*id.*, 35 Cal.3d at 188, 191) and most parks seek an increase once every year or two years. Code of Civil Procedure Section 1094.5 provides a speedy remedy for challenging rent increase decisions.

set for hearing until all relevant information required by the RIR ordinance was provided. The Wongs filed an action in the Los Angeles County Superior Court, Case No. C 707227, seeking a writ of mandate compelling the City to set their application for hearing without the missing information. (AR I tab 57) They alleged that the RIR ordinance was facially invalid because it conflicted with Government Code Section 65863.7 (AR I 568, 571-572) and its requirements were facially invalid. (AR I 570-574) After a trial on the merits, judgment was entered denying their petition on June 8, 1989. (App. 73, AR I 644) The Wongs did not appeal that judgment.

On August 1, 1989, the Wongs filed a revised but still incomplete use change application with the City. (App. 25-26, AR II 653) They did not complete the application until September 4, 1990. (App. 26, AR II tab 74) The application was then heard and approved subject to conditions by the City Council on March 19, 1991. (App. 28 & 66) This was just six months after the Wongs filed a complete application.[9]

After the City approved the use change, the Wongs claimed that the conditions imposed a financial hardship. (AR II tab 184) Although the Wongs were informed that they could seek modification of the conditions on that ground (AR II tabs 181, and 183), they did not do so. Instead, they filed an action in the United States District

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[9] The delay complained of in the petition was caused by the Wongs' prior state court action and subsequent delay in filing a complete application. Further, the Wongs were so dilatory in their prosecution of this case that the trial court considered dismissing it. (App. 14-15)

Court for the Central District of California, Case No. 91-2721-LEW, challenging the RIR Ordinance and the conditions (the "prior federal case").

The unpublished opinion in that case held that the ordinance did not violate the Thirteenth Amendment (App. 80-81), did not violate procedural due process (App. 80-82) and did not effect a physical or regulatory taking of the Wongs' property (App. 78-79)[10] The opinion also held that the conditions did not prevent the Wongs from going out of business and did not deprive them of procedural due process. (App. 81-82) Finally, it held that their taking challenges to the conditions was not ripe because the Wongs had not used available state court compensation remedies. (App. 79-80)

The Wongs did not appeal this decision and thus are barred by res judicata from challenging the facial validity of the ordinance. (App. 3, fn.3) The decision also bars them from claiming the conditions prevent them from going out of business or violate procedural due process. (App. 3, fn.3)

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[10] The petition suggests that the facial taking claims were not decided on their merits because the opinion also discusses the statute of limitations. However, the claims were clearly denied on their merits. (App. 77-78)

## REASONS FOR DENYING THE WRIT

### A. PETITIONERS' CLAIMS ARE NOT RIPE

The Wongs now make the unsupported claim that compliance with the conditions would cost them more than their property is worth and make it financially infeasible to change the use of their park. They never made these claims during the City's proceedings on their application. The evidence before the City was that the park was worth $7 million. (AR II 42) Based on that evidence the Wongs would profit by at least $3.9 million just by selling their property after relocating the homeowners. (See Factual Background above) Thus, there was no reason for the City to believe the relocation assistance required as a condition of approval would impose a financial hardship or make the change of use financially infeasible.

It was only after the conditions had been adopted that the Wongs claimed that they did not have the resources to comply with the conditions, asserting that they had lost the anchor tenants on which they premised their change of use plans. (AR II tab 184) At that time, the City told the Wongs that economic hardship was a ground for modification of the conditions under RIR Section 9128.21(F). (AR II tab 185) That Section provides, in pertinent part, as follows:

> "A modification of the RIR [approval] may be granted upon a finding that the approved RIR created a substantial hardship for the owner and that any such modification will not unreasonably prejudice the interests of the tenants." (Resp.App. 9)

However, the Wongs did not file a modification application and so failed to get a final decision from the City concerning how the RIR Ordinance will be applied to their property. Thus, their claims are not ripe. *Williamson County Planning Commission v. Hamilton Bank*, 473 U.S. 172, 186-87, 87 L.Ed.2d 126, 139, 105 S. Ct. 3108 (1985).[11]

There is no basis in this case for any exception to the requirement of obtaining a final decision concerning application of the ordinance. The prior federal case between the parties rejected the Wongs' claim that the modification process violates procedural due process. (App. 81-82) There is no basis for claiming that it would have been futile to seek modification. Section 9128.21(F) requires the City to make a factual inquiry concerning the hardship to the Wongs and whether the conditions can be modified without unreasonable prejudice to the homeowner/tenants. It is not possible to know what the outcome of such an inquiry would be because the relevant evidence was never presented to the City.

### B. THE RECORD IN THIS CASE DOES NOT PRESENT THE ISSUES CLAIMED BY PETITIONERS

The Wongs' taking and substantive due process challenge to the conditions are premised on their claims that they cannot change the use of their park, that they have

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[11] The trial court rejected this claim without explanation and the Court of Appeal did not address it as it upheld the City's actions on other grounds. However, the City preserved this issue in the Court of Appeal and it is a jurisdictional issue which cannot be waived.

been required to purchase the mobilehomes in their park and that their property is worth less than what it will cost them to comply with the conditions. However, the decisions in the prior federal case (App. 80-81) and the courts below in this case found that the conditions do not prevent the Wongs from changing the use of their property (App.4-5, 17). The courts below also found that the conditions do not require the Wongs to purchase the mobilehomes in the park. (App. 6, 17) They further found that the conditions do not exceed the "reasonable costs of relocation." (App. 6, 17)

There is no dispute as to the applicable law in this case. The issue in this case is not whether the Wongs may change the use of their park; they may clearly do so and will profit handsomely from the change of use after complying with the conditions of approval. (See Factual Background above) The Wongs are asking this Court to reverse the factual findings made by the courts below.

### C. THE PETITION ASSERTS "FACTS" NOT IN THE RECORD AND "FACTS" THAT ARE CONTRARY TO THE RECORD

The petition sets forth figures and calculations purporting to show that the Wongs' property is worth only $812,000 to $1.2 million. (Pet. p.6-7 & fn.6) These alleged values are the basis of the Wongs' claim that the conditions make change of use financially infeasible. However, there is no evidence in the Administrative Record or Clerk's Transcript below, to support this claim or the

calculations on which it is based.[12] In fact, the value of the property now claimed is contrary to the claims made by the Wongs during the City's hearings and in the trial court.

During hearings before the City, the Wongs claimed the park was worth $7 million. (AR II 42)[13] In the trial court, the Wongs offered a declaration concerning a proposed sale of the park to show that it was worth $5 million rather than $7 million. (CT 259) Thus, the Wongs' unsupported claim in this Court that the value of their property is only $812,000 to $1.2 million is inconsistent with the evidence before the City and inconsistent with the evidence the Wongs offered in the trial court. Moreover, they are now asserting their property should be valued as a mobilehome park when they seek a change of use so it can be developed as a shopping center, apartments and condominiums, as permitted by the City's zoning.

The Wongs' claim in this Court that they had no plan to sell or use their property for commercial purposes is contrary to: (1) the impact report they filed with the City (AR II 656); (2) their statements after approval of the use change that they had lost the anchor tenant for their

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[12] The calculations in footnote 6 of the petition are based on capitalization of alleged rental income. There is no evidence of that income in the record.

[13] The Wongs' claim made for the first time in this Court (pet. fn.3), that $7 million was the value the park would have had if sold to the homeowners for continued use as a mobilehome park and that it is worth far less for commercial purposes is not based on any evidence presented below.

proposed shopping center (AR II tab 184); (3) the declaration they offered in the trial court (CT 259); (4) the factual finding of the district court in the prior federal case (App. 74); and (5) the findings of the courts below (App. 2).

When the Wongs' claim that the property is worth only $812,000 to $1.9 million is disregarded, as it should be given the record, there is no basis whatsoever for the Wongs' claim that the compliance with the conditions make a change of use financially infeasible. As set forth in the Factual Background above, the Wongs will profit by at least $3.9 million just by selling their property if, as they claimed during the City's hearings, it is worth $7 million. Even if it is worth only $5 million, as they tried to claim in the trial court, they will still profit from the change of use by $1.9 million.[14]

Further, the Wongs have a choice between changing the use of the park and continuing to operate it as a mobilehome park. Given the record in this case, the Wongs cannot claim that the City's rent control ordinance has deprived them of a fair return on their investment. They have received a rent increase every time they have applied for one and have never challenged any of those increases as insufficient to provide a fair return. Having failed to do so and having failed to seek any rent increase since 1986 (AR I 3), they cannot now claim application of the ordinance has deprived them of viable economic use. *Yee, supra* 118 L.Ed.2d at 165.

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[14] The claim that they must give back the profits from the past operation of the park is unfounded. The Wongs have had and enjoyed that profit and will profit further from the use change.

### D. THE PRIOR FEDERAL ACTION AND PETITIONERS' FAILURE TO CHALLENGE CALIFORNIA GOVERNMENT CODE SECTION 65863.7 BAR ANY CLAIM THAT REQUIRING REASONABLE RELOCATION ASSISTANCE TO DISPLACED HOMEOWNERS DOES NOT SUBSTANTIALLY ADVANCE A LEGITIMATE PUBLIC PURPOSE

The Wongs cite a Washington State Supreme Court case, *Guimont v. Clarke*, 854 P.2d 1, 121 Wash.2d 566 (1993) and a Florida appellate court decision, *Aspen-Tarpon Springs L.P. v. Stuart*, 635 So.2d 61 (Fla.App.1994), to claim that requiring park owners to pay any relocation assistance whatsoever violates substantive due process and constitutes a taking. Based on these cases, the Wongs argue that it is not park owners who are responsible for the lack of affordable housing, the shortage of mobilehome spaces or poverty and that they should not, therefore, have to bear any of the burden of relocating displaced homeowners.

This is an attack on the legitimacy of the purpose of Government Code Section 65863.7 and the RIR ordinance, which authorize the City to condition a use change on providing reasonable relocation assistance. Such an attack cannot be raised in this action for two reasons. First, the Wongs did not challenge Government Code Section 65863.7 below and do not claim to challenge it now. Second, as set forth above, the decision in the prior federal case bars them from challenging the validity of the City's RIR ordinance. Therefore, the only issue in this case is whether the conditions substantially advance the

purpose of Section 65863.7 and the RIR Ordinance. (App.3, fn. 3) As set forth below, they clearly do.

## E. THE DECISION BELOW IS CLEARLY CORRECT

### 1. The Conditions Do Not Violate Substantive Due Process Or Result In A Regulatory Taking

A regulation, whether set forth in legislation, or the conditions on a land use permit, is valid under the substantive due process clause if it is rationally related to a legitimate governmental purpose. *Pennell v. City of San Jose*, 485 U.S. 1, 11-12, 99 L.Ed.2d 1, 14-15, 108 S.Ct. 849 (1986). Such legislation and conditions are valid under the takings clause so long as they substantially advance a legitimate governmental purpose and do not deny viable, economic use of property. *Dolan v. City of Tigard*, 512 U.S. ___, 129 L.Ed.2d 304, 316, 114 S.Ct. 2309 (1994); *Agins v. City of Tigard*, 447 U.S. 255, 260, 65 L.Ed.2d 106, 100 S.Ct. 2138 (1980). Further, *Dolan* explains that there should be a rough proportionality between any conditions imposed and the impact of the proposed land use. *Dolan, supra*, 129 L.Ed.2d at 320.[15]

The homeowners, whose investment in the park made it possible for the Wongs to operate the park, will lose their investment in their homes as a result of the use

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[15] There has been some debate concerning whether the "rough proportionality" test of *Dolan* applies in cases where no dedication or conveyance of title to land is involved. However, in this case, the detailed evidence of the impacts of the change of use and careful tailoring of the conditions to mitigate those impacts clearly satisfy the *Dolan* test.

change unless they are relocated. Requiring park owners to provide assistance in relocating the displaced homeowners serves a legitimate public purpose. *Pennell, supra.* Moreover, as set forth above, the legitimacy of this purpose cannot be challenged in this case.

The 20 volume Administrative Record contains detailed evidence of the costs of relocating each home. It also establishes that a homeowner whose home cannot be relocated will lose the investment in the home. The conditions do not require the Wongs to compensate the homeowners for all these costs. Instead, they simply reduce the costs the homeowners will incur as a result of the change of use. Thus, those whose homes can be relocated will be paid for the cost of moving the home and moving their furnishings. But the conditions will not compensate them for move-in costs (first and last months' rent, security deposits, upgrades to comply with changes in the California Codes since the homes were set up in the Wongs' park) or lodging during the time the home is being torn down, moved and set up again.

Those homeowners for whom a relocation space cannot be found will receive a lump sum payment which is equal to approximately one-half the fair market value the home would have if the use of the park were not being changed. That fair market value is what these homeowners will have to pay to purchase a mobilehome in another park, which is the least expensive replacement housing they could purchase. Thus, those homeowners will have to incur debt or otherwise make up the difference between the relocation payment and the price of a mobilehome in another park. Those who have outstanding debt on their homes have the additional problems of

dealing with their lenders and face possible deficiency judgments.[16]

Requiring the Wongs to pay a portion of the costs that will be incurred by the homeowners does not impose an undue burden on the Wongs and does not "go too far." The Wongs have profited over the years from operation of the park and will profit from the use change. The homeowners, whose investment made operation of the park profitable, will suffer a loss even with the assistance required.

In these circumstances, there can be no doubt that the conditions substantially advance the purpose of Government Code Section 65863.7 and the RIR Ordinance and do not result in a regulatory taking. For that reason they clearly meet the less stringent test applicable to the Wongs' claim that the conditions violate substantive due process.

### 2. The Conditions Do Not Effect A Physical Taking

The Wongs' claim that there has been a physical taking is based on the allegation that the conditions preclude them from changing the use of their park. However, as fully set forth above, they may change the use of their park upon the payment of relocation assistance and make a considerable profit after complying with conditions. Thus, as found in the prior federal case, the trial court and the Court of Appeal (App. 4, fn.4; 13, 17, 80-81), the

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[16] See footnote 6, *supra*.

conditions do not prevent them from changing the use of the park.

Nor can a physical taking arise from the fact that the homeowners are currently occupying their park. That occupation results from the Wongs' invitation to the homeowners to rent spaces in their park rather than from City regulation. Thus, it cannot be the basis for a physical taking claim. *Yee, supra,* 118 L.Ed.2d at 165-166.

### F. THE ISSUES IN THIS CASE ARE LIMITED BY ITS UNIQUE FACTS AND THOSE FACTS DO NOT RAISE ANY IMPORTANT ISSUE APPROPRIATE FOR DECISION BY THIS COURT

The California Court of Appeal did not consider this case sufficiently important to warrant publication. Although, the California Supreme Court initially granted review of the decision, it subsequently dismissed review as having been improvidently granted. (App. 71; See Rule 29.4(c) of the California Rules of Court) This dismissal was after the issues had been fully briefed in that Court.

No new or important issues of law are presented by this case. There is no conflict between the decision below and the decisions of this Court or of the Circuit Courts of Appeal. The decisions of this Court have already determined the tests applicable to whether the conditions on a land use permit violate substantive due process or result in a taking. The question whether those tests were properly applied in this case depends on the correctness of the factual findings of the courts below rather than on disputes concerning the applicable law.

Both the trial court and court of appeal rejected the Wongs' factual contentions as contrary to the evidence. In essence, the Wongs are asking this Court to review the decisions of those courts to correct factual error. That is not an appropriate basis for review by this Court. This is particularly true when, as in this case, it can readily be seen that the findings of the courts below were correct.

## CONCLUSION

The City respectfully requests that this Court deny the Wongs' petition for writ of certiorari because this case presents no issue appropriate for this Court's review and because the holdings of the lower courts were not in error.

DATED: September 7, 1995

Respectfully submitted,

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## CALIFORNIA GOVERNMENT CODE SECTIONS 65863.7 AND 65863.8

(a) Prior to the conversion of a mobilehome park to another use, except pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7), or prior to closure of a mobilehome park or cessation of use of the land as a mobilehome park, the person or entity proposing the change in use shall file a report on the impact of the conversion, closure, or cessation of use upon the displaced residents of the mobilehome park to be converted or closed. In determining the impact of the conversion, closure, or cessation of use on displaced mobilehome park residents, the report shall address the availability of adequate replacement housing in mobilehome parks and relocation costs.

(b) The person proposing the change in use shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at least 15 days prior to the hearing, if any, on the impact report by the advisory agency, or if there is no advisory agency, by the legislative body.

(c) When the impact report is filed prior to the closure or cessation of use, the person or entity proposing the change shall provide a copy of the report to a resident of each mobilehome in the mobilehome park at the same time as the notice of the change is provided to the residents pursuant to paragraph (2) of subdivision (f) of Section 798.56 of the Civil Code.

(d) When the impact report is filed prior to the closure or cessation of use, the person or entity filing the report or park resident may request, and shall have a

right to, a hearing before the legislative body on the sufficiency of the report.

(e) The legislative body, or its delegated advisory agency, shall review the report, prior to any change of use, and may require, as a condition of the change, the person or entity to take steps to mitigate any adverse impact of the conversion, closure, or cessation of use on the ability of displaced mobilehome park residents to find adequate housing in a mobilehome park. The steps required to be taken to mitigate shall not exceed the reasonable costs of relocation.

(f) If the closure or cessation of use of a mobilehome park results from an adjudication of bankruptcy, the provisions of this section shall not be applicable.

(g) The legislative body may establish reasonable fees pursuant to * * * Section * * * *66016* to cover any costs incurred by the local agency in implementing this section and Section 65863.8. Those fees shall be paid by the person or entity proposing the change in use.

(h) This section is applicable to charter cities.

(i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and

is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

**§ 65863.8. Mobilehome park; conversion to other use; notice to residents and owners of mobilehomes.**

A local agency to which application has been made for the conversion of a mobilehome park to another use shall, at least 30 days prior to a hearing or any other action on the application, inform the applicant in writing of the provisions of Section 798.56 of the Civil Code and all applicable local requirements which impose upon the applicant a duty to notify residents and mobilehome owners of the mobilehome park of the proposed change in use, and shall specify therein the manner in which the applicant shall verify that residents and mobilehome owners of the mobilehome park have been notified of the proposed change in use. Neither a hearing on the application, nor any other action thereon, shall be taken by the local agency before the applicant has satisfactorily verified that the residents and mobilehome owners have been so notified, in the manner prescribed by law or local regulation.

## EXCERPTS FROM THE CARSON MUNICIPAL CODE SECTION 9128.21, THE RELOCATION IMPACT REPORT ORDINANCE

**Section 9128.21 Relocation Impact Report (RIR)**

For the purposes of this Section, any closure of a mobile home park or trailer park or any part thereof or any change of the park's status to a vacant use shall be deemed to be a conversion of the park.

Prior to the conversion of a mobilehome park or trailer park or any part thereof to any other use or to a vacant use, the person or entity proposing such conversion (hereinafter "the owner") shall file and obtain approval of a relocation impact report (RIR) in accordance with the provisions contained in this Section.

**A. Time for Filing RIR**

An RIR shall be filed by the owner and approved by the Commission prior to the giving of the written notice of change in use of a mobilehome park or trailer park or any portion thereof required by Section 798.56(f) of the California Civil Code. The RIR shall constitute an application for a permit requesting a change of use within the meaning of Section 798.56(f)(2) of the California Civil Code.

If an owner files a tentative tract or parcel map to a subdivision to be created upon the conversion of a mobilehome park or trailer park to another use prior to giving the written notice under Section 798.56(f) of the California Civil Code, then the RIR shall be filed concurrently with the filing of the map.

If the written notice of change in use has been given to the tenants prior to the adoption of this

Section, the RIR shall be submitted within 30 days of the effective date of this Section.

**B. Content of RIR**

The RIR shall contain the following:

1. A description of the proposed new use.
2. A time table for conversion of the park.
3. A legal description of the park.
4. The number of spaces in the park, length of occupancy by the current occupant of each space, and current rental rate for each space.
5. The date of manufacture and size of each coach.
6. The appraised market and on-site value of each of the coaches in the park. The appraiser is to be selected by the City, and the cost is to be borne by the applicant.
7. The number of residents per space in the park, the number under 16 years of age, the number 60 years of age or over, and the number who are handicapped.
8. The name and mailing address of each tenant.
9. A list of known available spaces in the South Bay-Long Beach-Orange County area, including any written commitments from mobilehome park owners willing to accept displaced tenants.

10. Estimates from 2 moving companies as to the per mile cost of moving coaches of various sizes, including tear-down and set-up of coaches.

11. Proposed measures to mitigate the adverse impacts of the conversion upon the park residents.

12. Information whether tenants have been offered the option of a long-term lease of the land and purchase of the improvements if the park is to be sold.

**C. Hearing and Notice**

Upon filing of an RIR, the Director shall examine the same and advise the owner within 30 days after receipt thereof whether it is complete. When a complete RIR has been filed it shall be accepted by the Director, and the Director shall set a time, date and place for review of the RIR by the Commission not later than 30 days after the date of acceptance. The Director shall mail a copy of the RIR to all tenants of the mobilehome park or trailer park and shall give notice by first class mail or personal delivery to the owner and the tenants of the date, time and place of the hearing at least 15 days prior thereto. The notice shall also contain a general explanation of the matters to be considered by the Commission. The Director may give such additional notice as the Commission deems necessary or desirable. The hearing shall be conducted and the decision made in accordance with Sections 9173.23, 9173.31, 9173.32 and 9173.33 of this Chapter.

**D. Commission Findings and Decision**

Upon review of the RIR and consideration of the written and oral evidence received at the hearing, the Commission shall, by resolution, render its decision. The Commission shall approve the RIR if it is able to make an affirmative finding that reasonable measures have been provided in an effort to mitigate the adverse impact of the conversion on the ability of the park residents to be displaced to find alternative housing. If the Commission does not make this finding and is unable to impose reasonable measures to mitigate the adverse impact, the Commission may disapprove the RIR. No other permit or approval shall be granted in furtherance of the proposed conversion, and no change of use shall occur until and unless an RIR has been approved.

In approving an RIR, the Commission may impose reasonable measures to mitigate adverse impacts created by the conversion, which may include, but not be limited to, any of the following:

1. Provision for payment of the cost or partial cost of physically moving the coach to a new site, including tear-down and set-up of coaches.

2. For those tenants who move to apartments, provision of the first and last month's rent, plus security deposit, not to exceed the Fair Market Rents for new construction and substantial rehabilitation for the Los Angeles area as established by the U.S. Department of Housing and Urban Development.

Mobilehome households of 1 or 2 persons may be compensated based on a one-bedroom apartment; households of 3 or more mobilehome tenants may be compensated based on a two-bedroom rental.

3. Provision of a replacement space within a 50 mile radius of the mobilehome park or trailer park.

4. Postponement of the conversion for a reasonable period of time.

5. A requirement to purchase the coaches at fair market values, determined by an independent appraiser based on either the value of the coach sold in place, including improvements, yards and the like, or the market value.

6. A provision for setting aside a certain number of units if the park is to be converted to another residential use.

7. A longer notification period allowing the owner to pay a smaller portion of the relocation costs; amount of financial relocation to be determined by amount of prior notification given.

8. Owner to pay the difference in rent between the new and old park for a specified period of time.

**E. Effective Date and Appeal**

The decision of the planning Commission shall become effective and final 15 days after the date of its action unless an appeal is filed in accordance with Section 9173.4. An appeal shall be

considered by the Council as provided in Section 9173.4.

**F. Subsequent Modification of Mitigating Measures**

After an RIR has been approved, modification of the mitigation measures imposed, including additions or deletions, may be considered upon filing of a written application by the owner or his authorized representative. Any such application for modification shall be subject to the notice and hearing procedures set forth in Paragraph C of this Section. The decision and any appeal in connection with a modification request shall take place as with the initial approval. A modification of the RIR may be granted upon a finding that the approved RIR or a change of circumstances has created a substantial hardship for the owner and that any such modification will not unreasonably prejudice the interests of the tenants.

## EXCERPTS FROM THE CALIFORNIA MOBILEHOME RESIDENCY LAW, CALIFORNIA CIVIL CODE SECTION 798, *ET SEQ.*

**§ 798.55. Legislative findings; Notice of termination by management.** (a) The Legislature finds and declares that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter.

**§ 798.56. Reasons for termination of tenancy.** A tenancy shall be terminated by the management only for one or more of the following reasons:

(g) Change of use of the park or any portion thereof, provided:

(1) The management gives the homeowners at least 15 days' written notice that the management will be appearing before a local governmental board, commission, or body to request permits for a change of use of the mobilehome park.

(2) After all required permits requesting a change of use have been approved by the local governmental board, commission, or body, the management shall give the homeowners six months' or more written notice of termination of tenancy.

If the change of use requires no local governmental permits, then notice shall be given 12 months or more

prior to the management's determination that a change of use will occur. The management in the notice shall disclose and describe in detail the nature of the change of use.

(3) The management gives each proposed homeowner written notice thereof prior to the inception of his or her tenancy that the management is requesting a change of use before local governmental bodies or that a change of use request has been granted.

(4) The notice requirements for termination of tenancy set forth in Sections 798.56 and 798.57 shall be followed if the proposed change actually occurs.

(5) A notice of a proposed change of use given prior to January 1, 1980, which conforms to the requirements in effect at that time shall be valid. The requirements for a notice of a proposed change of use imposed by this subdivision shall be governed by the law in effect at the time the notice was given.

(h) The report required pursuant to subdivision (b) and (i) of Section 65863.7 of the Government Code shall be given to the homeowners or residents at the same time that notice is required pursuant to subdivision (g) of this section.

**§ 798.70. Advertisement for sale, exchange or rent.** A homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person, may

advertise the sale or exchange of his or her mobilehome, or, if not prohibited by the terms of an agreement with the management, may advertise the rental of his or her mobilehome, by displaying a sign in the window of the mobilehome, or by a sign posted on the side of the mobilehome facing the street, or by a sign in front of the mobilehome facing the street, stating that the mobilehome is for sale or exchange or, if not prohibited, for rent by the owner of the mobilehome or his or her agent. Any such person also may display a sign conforming to these requirements indicating that the mobilehome is on display for an "open house," unless the park rules prohibit the display of an open house sign. The sign shall state the name, address, and telephone number of the owner of the mobilehome or his or her agent and the sign face shall not exceed 24 inches in width and 36 inches in height. Signs posted in front of a mobilehome pursuant to this section may be of an H-frame or A-frame design with the sign face perpendicular to, but not extending into, the street. Homeowners may attach to the sign or their mobilehome tubes or holders for leaflets which provide information on the mobilehome for sale, exchange, or rent.

**§ 798.74. Approval of purchaser by management; Requirement of specification of information; Notification of acceptance or rejection of application.** (a) The management may require the right of prior approval of a purchaser of a mobilehome that will remain in the park and that the selling homeowner or his or her agent give notice of the sale to the management before the close of the sale. Approval cannot be withheld if the purchaser has the financial ability to pay the rent and charges of the

park unless the management reasonably determines that, based on the purchaser's prior tenancies, he or she will not comply with the rules and regulations of the park. In determining whether the purchaser has the financial ability to pay the rent and charges of the park, the management shall not require the purchaser to submit copies of any personal income tax returns in order to obtain approval for residency in the park. However, management may require the purchaser to document the amount and source of his or her gross monthly income or means of financial support. Upon request of any prospective homeowner who proposes to purchase a mobilehome that will remain in the park, management shall inform that person of the information management will require in order to determine if the person will be acceptable as a homeowner in the park.

Within 15 business days of receiving all of the information requested from the prospective homeowner, the management shall notify the seller and the prospective homeowner, in writing, of either acceptance or rejection of the application, and the reason if rejected. During this 15-day period the prospective homeowner shall comply with the management's request, if any, for a personal interview. If the approval of a prospective homeowner is withheld for any reason other than those stated in this article, the management or owner may be held liable for all damages proximately resulting therefrom.

**§ 798.80. (Operative until January 1, 1995) Notice to resident organization that mobilehome park is for sale.** (a) Not less than 30 days nor more than one year prior to an owner of a mobilehome park entering into a written listing agreement with a licensed real estate broker, as

defined in Article 1 (commencing with Section 10130) of Chapter 3 of Part 1 of Division 4 of the Business and Professions Code, for the sale of the park, or offering to sell the park to any party, the owner shall provide written notice of his or her intention to sell the mobilehome park by first-class mail or by personal delivery to the president, secretary, and treasurer of any resident organization formed by homeowners in the mobilehome park as a nonprofit corporation, pursuant to Section 23701v of the Revenue and Taxation Code, stock cooperative corporation, or other entity for purposes of converting the mobilehome park to condominium or stock cooperative ownership interests and for purchasing the mobilehome park from the management of the mobilehome park. An offer to sell a park shall not be construed as an offer under this subdivision unless it is initiated by the park owner or agent.

No. 95-241

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In the

# Supreme Court of the United States

October Term, 1995

DARRYL WONG, WILLIE WONG,
and DELPHINE WONG,
*Petitioners*,

v.

CITY COUNCIL OF THE CITY
OF CARSON and PLANNING
COMMISSION OF THE CITY OF CARSON,
*Respondents*.

**Petition for a Writ of Certiorari to the California Court of Appeal for the Second Appellate District**

## BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITION FOR CERTIORARI FILED BY PETITIONERS DARRYL WONG, ET AL

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## QUESTIONS PRESENTED FOR REVIEW

1. Is the City of Carson's Administrative Resolution 91-014, which conditions the City of Carson's issuance of a permit to terminate month-to-month tenancies and close the Avalon-Carson Mobile Home Park on the owners' payment of more than $1.4 million dollars to park tenants for mobile home coaches, moving expenses, dislocation fees, and stipends for low-income seniors and disabled tenants, a regulatory or physical taking, or both, under the Fifth Amendment of the United States Constitution?

2. Does the City of Carson's Administrative Resolution 91-014, which functionally requires the park owner to refund to tenants all of the profits the park owner has made, violate substantive due process in that it unreasonably deprives park owners of their "fair return" to which they are entitled under Carson's Rent Control Ordinance?

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No. 95-241

In the

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DARRYL WONG, WILLIE WONG,
and DELPHINE WONG,
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v.

CITY COUNCIL OF THE CITY
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COMMISSION OF THE CITY OF CARSON,
*Respondents*.

**Petition for a Writ of Certiorari to the California Court of Appeal for the Second Appellate District**

## BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITION FOR CERTIORARI FILED BY PETITIONERS DARRYL WONG, ET AL

## INTEREST OF AMICUS CURIAE

PLF is a nonprofit, tax-exempt corporation organized under the laws of the State of California for the purpose of litigating in cases affecting the public interest. PLF has over 20,000 contributors and supporters located throughout the

country and maintains its principal office in Sacramento, California.

PLF has participated in numerous cases involving issues arising under the Takings and Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. Its attorneys were counsel of record in the landmark United States Supreme Court case *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and PLF participated as amicus curiae in *Lucas v. South Carolina Coastal Council*, 505 U.S. __, 120 L. Ed. 2d 798 (1992); *Yee v. City of Escondido*, 503 U.S. __, 118 L. Ed. 2d 153 (1992); *Keystone Bituminous Coal Association v. DeBenedictis*, 480 U.S. 470 (1987); and *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987). Because of its public policy perspective and experience, Pacific Legal Foundation believes it can provide additional insight with respect to the issues before this Court in the present case. Pursuant to Rule 37.3, written permission from all parties to file this brief has been lodged with the clerk of the Court.

Given PLF's extensive involvement in cases concerning the Takings and Due Process Clauses of the Fifth and Fourteenth Amendments, PLF is particularly interested in ensuring that the bedrock principles of this Court are not eroded by implausible interpretations of takings case law by state or federal circuit courts. In *Nollan v. California Coastal Commission*, 483 U.S. 825, this Court reaffirmed the bright-line, two-part test set forth in *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980), that land use regulations will effect a taking if they fail to "'substantially advance legitimate state interests,'" or if they "'den[y] an owner economically viable use'" of property. *Nollan*, 483 U.S. at 834 (quoting *Agins v. City of Tiburon*, 447 U.S. at 260 (brackets in original)). The two prongs of the test are stated in the disjunctive; *either* is sufficient to establish a regulatory taking without further analysis. *See, e.g., Nollan v.*

*California Coastal Commission*, 483 U.S. 825 (striking down a regulatory exaction under a first-prong *Agins* challenge); *Lucas v. South Carolina Coastal Council*, 120 L. Ed. 2d 798 (striking down a regulation under a second-prong *Agins* challenge). Moreover, this Court has clearly established that land use regulations challenged under the Takings Clause must be subjected to a heightened standard of judicial review. *Nollan*, 483 U.S. at 836 n.3.

Members of this Court have expressed dismay about the difficulties which lower courts routinely encounter in attempting "to make sense of th[e] tension in [this Court's takings] caselaw." *Parking Association of Georgia, Inc. v. City of Atlanta, Georgia*, ___ U.S. ___, 132 L. Ed. 2d 273 (May 30, 1995), denial of petition for writ of certiorari, Thomas, J. and O'Connor, J., dissenting. The case at bar clearly illustrates the struggles of the lower courts in dealing with "the confused nature of some of [this Court's] takings case law...." *Id.* The decision below upheld an exorbitant financial exaction by the City of Carson that violated both prongs of *Agins*. The exaction failed to substantially advance a legitimate state interest and deprived petitioners of an economically viable use of their land. In considering whether the exaction was an unconstitutional taking, the court below merely paid lip service to *Nollan* and declined to engage in even the most cursory analysis.

"[T]he fact-specific nature of takings claims has led [this Court] to grant certiorari in takings cases without the existence of a conflict." *Parking Association of Georgia*, 132 L. Ed. 2d 274. Amicus Pacific Legal Foundation will illustrate that there *is* a significant conflict between the California courts and New York courts with respect to the proper application of *Nollan* and *Dolan*. This case presents this Court with an opportunity to clarify and expound on the regulatory takings doctrine of *Nollan* and *Dolan* and to resolve the current conflict between the state courts.

## OPINION BELOW

The dismissal of the case by the California Supreme Court is attached to petitioner's Petition for Writ of Certiorari, filed August 9, 1995. The unpublished opinion of the California Court of Appeal is attached to petitioners' Petition for Writ of Certiorari. The Court of Appeal held, *inter alia*, that the City of Carson (City) may require petitioners, who paid $1.7 million for a mobile home park, to pay more than $1.4 million to the resident mobile home owners as a condition of closing this mobile home park. The appellate court recognized the applicability of *Nollan v. California Coastal Commission*, yet found that a condition which virtually extinguished petitioners' investment was not an unconstitutional taking.

## STATEMENT OF THE CASE

Darryl, Willie, and Delphine Wong are owners of the Avalon Carson Mobile Home Park in the City of Carson. They acquired the property in June, 1979, and since that time have operated it as a mobile home park. The park contains 172 spaces, most of which are leased to mobile home owners for a monthly rental fee. Administrative Record (AR) 106, 6535.

Mobile home parks in California are a heavily regulated industry. Comprehensive statewide regulations include the Mobilehome Residency Law (Civ. Code § 798, *et seq.*) and the Mobilehome Parks Act (Health and Safety Code §§ 18200 to 18700). In addition, park owners seeking to convert their property to another use must comply with Government Code §§ 65863.7 to 65863.8 and other provisions. Local governments are authorized to require park owners to mitigate the impact of park closures on the

ability of displaced residents to find replacement housing, but such mitigation cannot exceed the reasonable costs of relocation. Gov't Code § 65863.7(e).

Shortly after the Wongs purchased their mobile home park, the City added to this existing matrix of regulation by adopting a mobile home rent control ordinance. The purposes of the park closure conditions promulgated by this ordinance include "protect[ing] the investment of mobile home coach owners, while allowing park owners to change the use of the[ir] property *without incurring unreasonable burdens*." Resolution No. 91-014, §4(D), Petition for Writ of Certiorari Appendix (App.) 32. (emphasis added.)

In March, 1988, the Wongs applied for permission to close the Avalon Carson Mobile Home Park. After a lengthy series of hearings and related procedures, the City agreed to the proposed closure only upon the condition that the Wongs comply with "mitigation" measures set forth in a document entitled Resolution No. 91-014. App. 23. This resolution, adopted by the City on March 19, 1991, requires the Wongs to make cash payments totaling $1,430,295 to mobile home coach owners residing in their park, almost equal to the $1.7 million purchase price of the park paid by the Wongs. AR 7, 161. The City's price for allowing the Wongs to go out of business exceeds all the profit the Wongs have earned on space rentals during their entire 16-year ownership of the park. Petition for Writ of Certiorari at 20.

The Wongs challenged the City's park closure conditions on the grounds that, *inter alia*, they effected a taking of the Wongs' property without just compensation, in violation of the Takings Clause of the Fifth Amendment. The trial court denied the Wongs' petition for a writ of administrative mandamus and dismissed their complaint for damages against the City. The Court of Appeal affirmed in an unpublished opinion. The California Supreme Court granted review on May 12, 1994. On May 11, 1995, the

California Supreme Court dismissed the case without decision, thereby invoking the jurisdiction of this Court, pursuant to 28 U.S.C. § 1257(a).

This case screams for review by this Court. The Wongs invested a substantial portion of their personal resources in this mobile home park and have struggled for 16 years under the City's onerous rent controls to try to make the operation a reasonable economic venture. Only after many years of effort did they conclude that further struggles would be fruitless. The lower court decision forces the Wongs to distribute the monetary value of their property among their tenants as the price of going out of business. Aside from the patent inequities of this situation, this Court should also review this case because it offers the unique opportunity to clarify the proper method for reviewing takings claims under the bright-line, two-prong test of *Agins*, as set forth in *Nollan* and *Dolan*.

## ARGUMENT

### I

### THIS CASE PRESENTS AN OPPORTUNITY FOR THIS COURT TO CLARIFY THE PROPER ANALYSIS FOR DETERMINING A COMPENSABLE TAKING AND TO RESOLVE THE PRESENT CONFLICT AMONG THE STATES

The appropriate framework for evaluating regulatory takings claims was established by this Court in *Agins v. City of Tiburon*: "The application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state interests [citation], *or* denies an owner economically viable use of his land [citation]." 447 U.S. at 260 (emphasis added). This two-prong approach for establishing a taking, either by a showing that the regulation does not substantially advance a legitimate

state interest ("first-prong *Agins* challenge") or by showing a denial of economically viable use of land ("second-prong *Agins* challenge"), has been reiterated by this Court in nearly every regulatory takings case in the last 15 years. Numerous state decisions and dozens of federal cases have also recited and relied on the disjunctive *Agins* test.

Regulatory takings have been found under either prong of *Agins*. *See, e.g., Nollan v. California Coastal Commission*, 483 U.S. 825 (striking down a regulatory exaction under a first-prong *Agins* challenge); *Lucas v. South Carolina Coastal Council*, 120 L. Ed. 2d 798 (striking down a regulation under a second-prong *Agins* challenge). In the case at bar, neither prong of the *Agins* test revealed a regulatory taking because the Court of Appeal failed to even apply the test!

**A. A Great Deal of Confusion Has Arisen Among the State and Federal Courts With Respect to the Proper Analysis for Determining a Compensable Taking**

"The lower courts should not have to struggle to make sense of th[e] tension in [this Court's takings] case law." *Parking Association of Georgia, Inc. v. City of Atlanta, Georgia*, 132 L. Ed. 2d 273, denial of petition for writ of certiorari, Thomas, J. and O'Connor, J., dissenting. Lower state and federal courts have fallen into conflict and confusion in their application of *Agins* to regulatory takings. At least six different variations of the *Agins* test have arisen, leading to unpredictable and arbitrary outcomes of takings issues, thereby necessitating further guidance from this Court.

Some courts properly apply the disjunctive *Agins* test and recognize that satisfaction of either prong of *Agins* suffices to constitute a regulatory taking. *Seawall Associates v. City of New York*, 542 N.E.2d 1059 (N.Y. 1989), exemplifies the line of cases supporting the disjunctive

application of the *Agins* test.[1] The New York Court of Appeals struck down a regulation of rental property because the challenged law did not substantially advance legitimate state interests and denied plaintiffs economically viable use of their property. *Id.* at 1069. The Court of Appeals held that, under either prong of the *Agins* test, the regulation was invalid and constituted a regulatory taking. *Id.* at 1068-69. Conversely, in the case at bar, the Court of Appeal failed to apply either prong of the *Agins* test to the regulation at issue, instead analogizing to condominium conversion cases which had upheld relocation assistance conditions. App. 4-5. Because the appellate court saw "no reason why the result ought to be different in the context of mobilehomes" (App. 5), no *Agins* analysis was done.

Other courts have found a regulatory taking under the first prong of the *Agins* test without proceeding to analyze the second prong. *Manocherian v. Lenox Hill Hospital,* 643 N.E.2d 479 (N.Y. 1994), represents this line of disjunctive application cases.[2]

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[1] *See also McDougal v. County of Imperial,* 942 F.2d 668, 677 (9th Cir. 1991) (reciting disjunctive *Agins* test in negative voice); *Kelly v. Tahoe Regional Planning Agency,* 855 P.2d 1027, 1033 (Nev. 1993) (reciting disjunctive *Agins* test); *Miller v. Columbia River Gorge Commission,* 848 P.2d 629, 630 and 630 n.1 (Or. Ct. App. 1993) (acknowledging that taking occurs if either prong of *Agins* test is satisfied); *Gardner v. New Jersey Pinelands Commission,* 593 A.2d 251, 257 (N.J. 1991) (reciting disjunctive *Agins* test in negative voice).

[2] *See also Schultz v. City of Grants Pass,* 884 P.2d 569, 573 (Or. Ct. App. 1994) (holding that imposed exaction of land was regulatory taking because exaction did not relate to impact of plaintiffs' proposed development); *Whitehead Oil Co. v. City of Lincoln,* 515 N.W.2d 401 (Neb. 1994) (holding that arbitrary and capricious government action did not advance legitimate state interest and thus was regulatory taking).

Despite this Court's clear statements and demonstrations that the two-part *Agins* analysis is a ***disjunctive*** test, some courts have applied the two prongs in the ***conjunctive***. Under this approach, no taking is found unless the plaintiff has satisfied ***both*** prongs. Thus, under the conjunctive application, one who alleges a regulatory taking must prove ***both*** that the regulation fails to substantially advance a legitimate state interest ***and*** that the regulation denies the owner economically viable use of her property. An example of this approach is *Del Oro Hills v. City of Oceanside*, 31 Cal. App. 4th 1060 (1995). This clearly erroneous interpretation of this Court's regulatory takings doctrine has also been adopted in other states. *See Gerijo, Inc. v. City of Fairfield*, 638 N.E.2d 533 (Ohio 1994) (applying conjunctive *Agins* test).

A few courts have analyzed the first prong of the *Agins* test as a substantive due process claim. As with the conjunctive interpretation, however, this method consistently requires satisfaction of the second prong in order to find a regulatory taking that merits just compensation. An example of this approach is *Eide v. Sarasota County*, 908 F.2d 716 (11th Cir. 1990).

Still other courts have applied both a substantive due process and a takings analysis. This method permits first prong *Agins* claims under either the "arbitrary and capricious due process" theory ***or*** the Fifth Amendment takings theory. This approach highlights the difference in standards of review between a due process claim and a takings claim and demonstrates how applying an exclusive due process theory to a takings claim permits lower courts to elude *Nollan*'s heightened standard of review for takings claims. Avoidance of the "essential nexus" test set out in *Nollan*, 483 U.S. at 837, places the burden of proof for takings claims on property owners. According to this Court's decision in *Dolan v. City of Tigard*, 512 U.S. ___, 129 L. Ed. 2d 304

(1994), however, the burden of proof for such claims properly lies with the government. *Id.* at 320. The nonexclusive substantive due process analysis was applied in *Southview Associates, Ltd. v. Bongartz*, 980 F.2d 84 (2d Cir. 1992). *See also Halverson v. Skagit County*, 42 F.3d 1257, 1261 (9th Cir. 1995) (stating that facts which form basis of "arbitrary and capricious due process" claim may also form basis of takings claim). This flawed method may bear the closest resemblance to the appellate court's analysis in the case at bar where the court declined to undertake any type of takings analysis and simply asserted that a due process attack is not appropriate "unless the restriction is *clearly arbitrary and unreasonable*...." App. 6 (emphasis added).

Other courts apply a "balancing" test, which either subsumes or completely ignores the two-prong *Agins* test. This application effectively analyzes the second prong of the *Agins* test under the three-part balancing test set out in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978) (balancing the economic impact of the regulation on the claimant, its interference with investment-backed expectations, and the character of the government action). Courts applying the balancing test either ignore the first prong of *Agins*, or they conclude that plaintiff has failed to satisfy the first prong. *See McAndrews v. Fleet Bank of Massachusetts*, 989 F.2d 13 (1st Cir. 1993); *Esposito v. South Carolina Coastal Council*, 939 F.2d 165, 170-71 (4th Cir. 1991) (applying *Penn Central* balancing test to analyze second prong of *Agins* test after determining that plaintiff has failed to satisfy first prong); *Woodbury Place Partners v. City of Woodbury*, 492 N.W.2d 258, 262 (Minn. Ct. App. 1993) (remanding to District Court to determine existence of regulatory taking under "economically viable use" analysis in light of *Penn Central* balancing test).

Finally, some courts use second prong takings analysis exclusively, calling the first prong irrelevant. Among cases

subscribing to the second prong application, *Reahard v. Lee County*, 968 F.2d 1131 (11th Cir. 1992), provides a unique analysis. *See also, Moore v. City of Costa Mesa*, 886 F.2d 260, 263 (1989) (restricting takings analysis to second prong of *Agins* test despite lower court's finding that challenged regulation was invalid but not unconstitutional); *City of Pompano Beach v. Yardarm Restaurant, Inc*, 641 So.2d 1377, 1384 (Fla. Dist. Ct. App. 1994) (court finds second prong argument, based on an alleged invalid exercise of the police power, insufficient for a takings, noting that the trial court's embrace of an *Agins*' first prong takings analysis was simply "an understandable error given that 'takings' law is one of the most confused areas in American jurisprudence.").

It may be that the Court of Appeal in the case at bar has created yet another method of analysis, where ***no*** type of takings analysis need even be done because the use of the property in question (here, a mobile home park) can be analogized to other uses on other properties (such as condominium conversions), where no regulatory taking has been found. App. 4-6.

These various applications of the *Agins* test breed varying and unpredictable results, even when applied to the same fact situation. For example, if the court in *Gerijo, Inc. v. City of Fairfield*, 638 N.E.2d 533, had applied a ***disjunctive*** instead of conjunctive analysis, the plaintiff could likely have established a regulatory taking because the challenged ordinance failed to advance a legitimate state interest. *Gerijo*, 638 N.E.2d at 537. No further analysis would have been necessary. Further guidance from this Court regarding a uniform application of the *Agins* test would alleviate the unpredictability prevalent in current takings doctrine.

**B. The State Courts of California Have Consistently Refused to Apply the Heightened Standards of Review Set Forth by This Court in Nollan v. California Coastal Commission and Dolan v. City of Tigard**

Instead of accommodating the mandate of this Court, the California judiciary responded to *Nollan*'s requirement for a heightened standard of review by mischaracterizing the decision as a physical invasion case which did not apply to regulatory takings. The most notorious example in this line of decisions is *Blue Jeans Equities West v. City and County of San Francisco*, in which the California Court of Appeal proclaimed that *Nollan* applies only to "possessory" takings--even though no such term appears in the text of *Nollan* or in any other decision ever issued by this Court! 3 Cal. App. 4th 164, 169 (1992).

Although the *Blue Jeans Equities* holding was flatly preposterous on its face, it has been embraced by a majority of California's appellate districts as a means to avoid applying *Nollan's* requirement of heightened scrutiny to property regulations. *See Tahoe Keys Property Owners' Association v. State Water Resources Control Board*, 23 Cal. App. 4th 1459 (1994); *Saad v. City of Berkeley*, 24 Cal. App. 4th 1206 (1994); *Ehrlich v. City of Culver City*, 15 Cal. App. 4th 1737 (1993), *cert. granted and judgment vacated*, 129 L. Ed. 2d 854 (1994); *City and County of San Francisco v. Golden Gate Heights Investments*, 14 Cal. App. 4th 1203 (1993); *see also Commercial Builders v. City of Sacramento*, 941 F.2d 872 (9th Cir. 1991), *cert. denied*, 118 L. Ed. 2d 593 (1992) (stating that *Nollan* did *not* "chang[e] the level of scrutiny to be applied to regulations that do not constitute a physical encroachment on land").

Even after this Court's express citation to *Nollan* as the standard applicable to nonphysical takings in *Yee v. City of Escondido*, ___ U.S. ___, 118 L. Ed. 2d at 167, California

courts have persisted in following the erroneous doctrine of *Blue Jeans Equities*, interpreting "possessory taking" to denote what the Supreme Court has always called a physical taking. *See, e.g., Westwinds Mobile Home Park v. Mobilehome Park Rental Review Board*, 30 Cal. App. 4th 84, 90 (1994) (refusing to apply *Nollan* to a regulatory takings case and asserting that "*Nollan* involved a statute which physically appropriated property"--despite the fact that no statute of any kind was at issue in *Nollan*, and no physical appropriation of property occurred or was alleged by either party).

The California judiciary's hostility to the Fifth Amendment rights of property owners should be no surprise to this Court. In *First English Evangelical Lutheran Church v. County of Los Angeles*, this Court noted that "the California courts have decided the compensation question inconsistently with the requirements of the Fifth Amendment." 482 U.S. at 311. Similarly, in *Nollan v. California Coastal Commission*, this Court noted that its approach to regulatory takings "is consistent with the approach taken by every other court ... with the exception of the California state courts." *Id.* at 839.

Since this Court's decision in *Dolan v. City of Tigard*, 129 L. Ed. 2d 304, some members of this Court have continued to express frustration at the "confused nature of some of [this Court's] takings case law" and have observed that certiorari has been granted "in takings cases without the existence of a conflict." *Parking Association of Georgia, Inc. v. City of Atlanta, Georgia*, 132 L. Ed. 2d 273, denial of petition for writ of certiorari, Thomas, J. and O'Connor, J., dissenting. There is no such absence of conflict in this case because California has consistently misapplied the takings analysis carefully developed by this Court and, as shown above, this misapplication has been gaining an increased acceptance among state and federal circuit courts. Further, the recalcitrance of the California judiciary has

created a direct conflict with New York state courts because those courts have followed the dictates of *Nollan* and *Dolan*.

### C. A Conflict Between the New York and California Courts Exists Because New York Follows This Court's Nollan and Dolan Decisions While California Does Not

In addition to conflicting with the holdings of this Court, the regulatory takings decisions of the state courts of California have come into direct conflict with the New York State Court of Appeals on federal takings issues. This conflict between the courts of the most populous states of the Union on federal constitutional questions can only be resolved by a timely and forceful ruling by this Court.

In contrast to the labored efforts of the California judiciary to evade this Court's teaching in *Nollan* and *Dolan*, the highest court of the State of New York has applied the heightened standards of review set forth in these cases to strike down overzealous regulation of private property both facially and as applied. While the California Court of Appeal was evading *Nollan* by concocting the "possessory takings" doctrine of *Blue Jeans Equities*, the New York State Court of Appeals promptly acknowledged that

> the "close nexus" test ... requires "semi-strict or heightened judicial scrutiny of regulatory means-ends relationships" as articulated in *Nollan*.

*Seawall Associates v. City of New York*, 542 N.E.2d at 1068.

Five years after *Seawall*, the New York Court of Appeals applied this Court's *Dolan* decision to find a regulatory taking arising from a rent control measure in *Manocherian v. Lenox Hill Hospital*, 618 N.Y.S.2d 857. Applying the heightened scrutiny required by this Court, the New York panel observed that *Nollan* and *Dolan* "establish a ***constitutional minimum floor of protection which this***

***Court lacks authority to diminish under the supremacy clause.***" 618 N.Y.S.2d at 860 (emphasis added).

In sharp contrast to the New York court's regard for the Supremacy Clause, California has responded to *Dolan* by concocting a new rationale to evade this Court's regulatory takings doctrine. The case at bar exemplifies such evasion, where this Court's *Nollan* ruling was cited but not discussed. Instead, the appellate court summarily concluded that "[o]ur courts have routinely upheld relocation assistance conditions imposed when an apartment owner seeks permission to convert to condominiums (citations) and we see no reason why the result ought to be different in the context of mobilehomes." App. 4-5. By failing to apply *Nollan* and *Dolan*, the court below has come into direct conflict with the state courts of New York, as well as this Court.

## II

## THE APPELLATE COURT FAILED TO APPLY HEIGHTENED SCRUTINY AND, HAD IT DONE SO, WOULD HAVE FOUND A COMPENSABLE TAKING UNDER EITHER PRONG OF AGINS

### A. The Lower Court Did Not Apply Heightened Scrutiny to the Condition

In erroneously upholding the validity of Resolution No. 91-014, the court below fundamentally misconstrued the legal question that was before it. By framing the issue as "whether the relocation assistance conditions imposed by the City of Carson are reasonable," App. 5, the Court of Appeal invoked a deferential standard of review which has been twice repudiated by this Court. Instead of applying heightened scrutiny to the City's park closure conditions, the appellate court merely held that "substantial evidence supports the trial court's findings" that the park closure conditions did not comprise a taking. As this Court well knows, such a deferential standard is wholly inadequate for

a regulatory takings challenge, and constitutes independent grounds for reversal.

The conclusory, highly deferential analysis of the court below directly contravenes the constitutional mandate of this Court as expressed in *Nollan* and *Dolan*. The Court of Appeal's failure to apply any semblance of heightened scrutiny to the City's park closure conditions was erroneous in itself, and contributed to a clearly erroneous finding of constitutionality.

**B. The Conversion Ordinance Fails to Substantially Advance a Legitimate State Interest**

Regardless of its economic impact, a land use restriction will constitute a taking if it fails to "substantially advance legitimate state interests." *Agins v. Tiburon*, 447 U.S. at 262. This rule was first given analytical substance in *Nollan v. California Coastal Commission*, 483 U.S. 825.

As set forth in *Nollan*, a legitimate state interest is one ***directly related*** to a public burden that would be created by the proposed land use, which would justify outright denial of the property owner's application. *Nollan*, 483 U.S. at 835-37. Substantial advancement means directly mitigating that public burden.

In the case at bar, the City is requiring the Wongs to pay more than $1.4 million as a condition of closing their mobile home park. The ostensible purposes of the City's park closure conditions are recited in Resolution No. 91-014. These include "protect[ing]" the investment of mobile home coach owners, while allowing park owners to "change the use of the[ir] property without incurring unreasonable burdens." The record indicates that the appraised value of the subject coaches, including all improvements, is $641,859. Thus, even if the Wongs were responsible for insuring their residents against any risk of loss, the maximum liability this could generate is less than 50% of the $1.4 million demanded

by the City. In essence, the City is requiring the Wongs to pay each of their residents 100% of the market value of their mobile home coaches--plus an additional $650,000 to ransom the Wongs' own property! Such a requirement flies in the face of the "rough proportionality" test of *Dolan*.

Rather than engaging in close scrutiny of Resolution No. 91-014 as required by *Nollan* and, rather than requiring the City to carry its burden of proof as required by *Dolan*, the Court of Appeal upheld the City's conditions without even bothering to examine their impact. The Court of Appeal's inquiry began and ended with a recitation of Government Code § 65863.7. App. 5. It was, however, "the City's RIR ordinance that was the issue in the case (App. 2), *not* Government Code § 65863.7. Having determined that state law authorizes relocation fees not exceeding "reasonable costs of relocation," the appellate panel immediately proclaimed that Resolution No. 91-014 substantially advances a legitimate state interest. *Id.* The actual impact of the City's conditions was not even examined!

This Court's requirement that challenged regulations must substantially advance legitimate state interests requires more than a mere genuflection toward the government's police power. In *Nollan*, this Court looked past the Coastal Commission's avowed objective and found that the actual purpose served by its permit condition was, "quite simply, the obtaining of an easement to serve some valid governmental purpose, but without payment of compensation." 483 U.S. at 837. Comparable scrutiny of Resolution No. 91-014 would reveal that its purpose and effect is simply to transfer a valuable property interest from mobile home park owners to the coach owners who reside on their land. It cannot seriously be argued that such a special interest transfer, extorting assets from one class of property owners and shifting them to another, complies with the "substantial

advancement" test as that standard has been set forth in *Nollan* and *Dolan*.

### C. Resolution No. 91-014 Deprives the Wongs of Economically Viable Use of Property

Turning to the second prong of the regulatory takings inquiry, this Court has made it clear that land use restrictions which deprive owners of economically viable use of their property will violate the Takings Clause regardless of the merits of the state interests which they may advance. *Lucas v. South Carolina Coastal Council*, 120 L. Ed. 2d 798; *Hodel v. Virginia Surface Mining and Reclamation Association, Inc.*, 452 U.S. 264, 295-96 (1981); *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1, 14 (1984). The Court of Appeal committed yet another fundamental error by failing to subject Resolution No. 91-014 to this constitutionally mandated, independently sufficient test for a regulatory taking.

There can be no doubt that the Wong's right to occupy a rent-controlled space on their land in perpetuity is a protected property interest under the Takings Clause. This Court has defined the interests subject to constitutional protection as all those rights inhering in an individual's relation to the thing owned, including the rights of possession, use, and disposal. *United States v. General Motors Corp.*, 323 U.S. 373, 378 (1945). Protected property interests include not just fee interests and leaseholds, but "every sort of interest the citizen may possess." *Id.*

Requiring the Wongs to make cash payments to recover the value of their own property graphically demonstrates that the City has deprived the Wongs of any economically viable use of this valuable property interest. Under the clear standards laid down by this Court, this deprivation violates the Takings Clause in and of itself, without regard to the legitimacy of the governmental purposes which might be advanced thereby.

**D. The City's Park Closure Conditions Unfairly Require the Wongs to Bear a General Public Burden**

The essential purpose of the Takings Clause is to place a check on the government's exercise of the police power at the expense of individual rights. The ultimate question in considering whether a regulation has gone too far is whether it "forc[es] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

In addition to examining the nature of the state action embodied in a regulation and its economic impact on property owners, the Supreme Court has assigned primary significance to this question of basic equity. The issue of disproportionate impact permeates the *Nollan* and *Dolan* decisions and underlies all of the specific "ad hoc" balancing tests this Court has applied to the takings question.

In the case at bar, the conditions set forth in Resolution No. 91-014 are intended to benefit a narrowly circumscribed class of citizens, namely those persons of low or moderate income whose principal asset is their mobile home coach. No one would dispute that the protection of people whose circumstances make them deserving of "unique protection" is a worthy objective. *See, e.g.*, Civ. Code § 798.55(a). But that does not establish that the Wongs and other park owners may be compelled to bear the full costs of such a "comprehensive program." *Nollan*, 483 U.S. at 841.

For 15 years, the Wongs have provided affordable housing for the residents of the Avalon Carson Mobile Home Park. During this time, the City has continuously regulated the Wongs' property to ensure that their residents have enjoyed rents below competitive market levels. In addition to bearing this long burden, distributing the full value of their own property to the residents of their park, or ransoming the right to occupy their own land, grossly

exceeds the Wongs' rightful share of the societal burden of providing affordable housing.

The issue is not whether special subsidies to mobile home coach owners are worth the costs, but rather who should pay. "[T]he question at bottom is upon whom the loss ... should fall." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922). As Justice Scalia concluded regarding the governmental objective in *Nollan*, "[t]he Commission may well be right that it is a good idea, but that does not establish that the Nollans (and other coastal residents) alone can be compelled to contribute to its realization. ... [If California] wants an easement across the Nollans' property, it must pay for it." 483 U.S. at 841-42. This conclusion is directly applicable to the case at bar. If the City wants to redistribute the value of the Wongs' property to the owners of mobile home coaches, it is constitutionally required to pay for it.

## CONCLUSION

For the foregoing reasons, amicus Pacific Legal Foundation respectfully urges this Court to grant certiorari.

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